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61ST CONGRESS, { HOUSE OF REPRESENTATIVES. { REPORT
2d Session. { No. 923.

RAILROAD BILL.

APRIL 1, 1910.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

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Mr. MANN, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT.

[To accompany H. R. 17536.]

The Committee on Interstate and Foreign Commerce, to which was referred the bill (H. R. 17536) to create an interstate-commerce court and to amend the act entitled "An act to regulate commerce," approved February 4, 1887, as heretofore amended, and for other purposes, beg leave to report the bill back, with certain amendments, with the recommendation that the amendments be agreed to, and that the bill as amended do pass.

The amendments recommended by the committee are an amendment to the title of the bill and an amendment striking out all after the enacting clause and inserting in lieu thereof the part hereinafter set forth in this report under the heading of "Substitute amendment."

RECOMMENDATIONS OF THE PRESIDENT.

President Taft, in his special message to Congress, dated January 7 last, made the following statement:

[Extract from special message of the President.]

I withheld from my annual message a discussion of needed legislation under the authority which Congress has to regulate commerce between the States and with foreign countries and said that I would bring this subject-matter to your attention later in the session. Accordingly, I beg to submit to you certain recommendations as to the amendments to the interstate-commerce law. * * *

INTERSTATE-COMMERCE LAW.

In the annual report of the Interstate Commerce Commission for the year 1908 attention is called to the fact that between July 1, 1908, and the close of that year sixteen suits had been begun to set aside orders of the commission (besides one commenced before that date), and that few orders of much consequence had been permitted to go without protest; that the questions presented by these various suits were fundamental, as the constitutionality of the act itself was in issue, and the right of Congress to delegate to any tribunal authority to establish an interstate rate was denied; but that perhaps the most serious practical question raised concerned the extent of the right of the courts to review the orders of the commission; and it was pointed out that if the contention of the carriers in this latter respect alone were sustained, but little progress had been made in the Hepburn Act toward the effective regulation of interstate transportation charges. In twelve of the cases referred to, it was stated, preliminary injunctions were prayed for, being granted in six and refused in six.

“It has from the first been well understood,” says the commission, “that the success of the present act as a regulating measure depended largely upon the facility with which temporary injunctions could be obtained. If a railroad company, by mere allegation in its bill of complaint, supported by ex parte affidavits, can overturn the result of days of patient investigation, no very satisfactory result can be expected. The railroad loses nothing by these proceedings, since if they fail it can only be required to establish the rate and to pay to shippers the difference between the higher rate collected and the rate which is finally held to be reasonable. In point of fact it usually profits, because it can seldom be required to return more than a fraction of the excess charges collected.”

In its report for the year 1909 the commission shows that of the seventeen cases referred to in its 1908 report, only one had been decided in the Supreme Court of the United States, although five other cases had been argued and submitted to that tribunal in October, 1909.

Of course, every carrier affected by an order of the commission has a constitutional right to appeal to a federal court to protect it from the enforcement of an order which it may show to be *prima facie* confiscatory or unjustly discriminatory in its effect; and as this application may be made to a court in any district of the United States, not only does delay result in the enforcement of the order, but great uncertainty is caused by contrariety of decision. The questions presented by these applications are too often technical in their character and require a knowledge of the business and the mastery of a great volume of conflicting evidence which is tedious to examine and troublesome to comprehend. It would not be proper to attempt to deprive any corporation of the right to the review by a court of any order or decree which, if undisturbed, would rob it of a reasonable return upon its investment or would subject it to burdens which would unjustly discriminate against it and in favor of other carriers similarly situated. What is, however, of supreme importance is that the decision of such questions shall be as speedy as the nature of the circumstances will admit, and that a uniformity of decision be secured so as to bring about an effective, systematic, and scientific enforcement of the commerce law, rather than conflicting decisions and uncertainty of final result.

For this purpose I recommend the establishment of a court of the United States composed of five judges designated for such purpose from among the circuit judges of the United States, to be known as the “United States Court of Commerce,” which court shall be clothed with exclusive original jurisdiction over the following classes of cases:

(1) All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty, or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

(2) All cases brought to enjoin, set aside, annul, or suspend any order or requirement of the Interstate Commerce Commission.

(3) All such cases as under section 3 of the act of February 19, 1903, known as the “Elkins Act,” are authorized to be maintained in a circuit court of the United States.

(4) All such mandamus proceedings as under the provisions of section 20 or section 23 of the interstate-commerce law are authorized to be maintained in a circuit court of the United States.

Reasons precisely analogous to those which induced the Congress to create the Court of Customs Appeals by the provisions in the tariff act of August 5, 1909, may be urged in support of the creation of the commerce court.

In order to provide a sufficient number of judges to enable this court to be constituted, it will be necessary to authorize the appointment of five additional circuit judges, who, for the purposes of appointment, might be distributed to those circuits where there is at the present time the largest volume of business, such as the second, third, fourth, seventh, and eighth circuits. The act should empower the Chief Justice at any time when the business of the court of commerce does not require the services of all the judges to reassign the judges designated to that court to the circuits to which they respectively belong; and it should also provide for payment to such judges while sitting by assignment in the court of commerce of such additional amount as is necessary to bring their annual compensation up to \$10,000.

The regular sessions of such court should be held at the capital, but it should be empowered to hold sessions in different parts of the United States if found desirable; and its orders and judgments should be made final, subject only to review by the Supreme Court of the United States, with the provision that the operation of the decree appealed from shall not be stayed unless the Supreme Court shall so order. The commerce court should be empowered in its discretion to restrain or suspend the operation of an order of the Interstate Commerce Commission under review pending the final hearing and determination of the proceeding, but no such restraining order should be made except upon notice and after hearing, unless in cases where irreparable damage would otherwise ensue to the petitioner. A judge of that court might be empowered to allow

a stay of the commission's order for a period of not more than sixty days, but pending application to the court for its order or injunction, then only where his order shall contain a specific finding based upon evidence submitted to the judge making the order and identified by reference thereto, that such irreparable damage would result to the petitioner, specifying the nature of the damage.

Under the existing law, the Interstate Commerce Commission itself initiates and defends litigation in the courts for the enforcement, or in the defense, of its orders and decrees, and for this purpose it employs attorneys who, while subject to the control of the Attorney-General, act upon the initiative and under the instructions of the commission. This blending of administrative, legislative, and judicial functions tends, in my opinion, to impair the efficiency of the commission by clothing it with partisan characteristics and robbing it of the impartial judicial attitude it should occupy in passing upon questions submitted to it. In my opinion all litigation affecting the Government should be under the direct control of the Department of Justice; and I therefore recommend that all proceedings affecting orders and decrees of the Interstate Commerce Commission be brought by or against the United States *eo nomine*, and be placed in charge of an Assistant Attorney-General acting under the direction of the Attorney-General.

The subject of agreements between carriers with respect to rates has been often discussed in Congress. Pooling arrangements and agreements were condemned by the general sentiment of the people, and, under the Sherman antitrust law, any agreement between carriers operating in restraint of interstate or international trade or commerce would be unlawful. The Republican platform of 1908 expressed the belief that the interstate-commerce law should be further amended so as to give the railroads the right to make and publish traffic agreements subject to the approval of the commission, but maintaining always the principle of competition between naturally competing lines and avoiding the common control of such lines by any means whatsoever. In view of the complete control over rate making and other practices of interstate carriers established by the acts of Congress and as recommended in this communication, I see no reason why agreements between carriers subject to the act, specifying the classifications of freight and the rates, fares, and charges for transportation of passengers and freight which they may agree to establish, should not be permitted, provided copies of such agreements be promptly filed with the commission, but subject to all the provisions of the interstate-commerce act, and subject to the right of any parties to such agreement to cancel it as to all or any of the agreed rates, fares, charges, or classifications by thirty days' notice in writing to the other parties and to the commission.

Much complaint is made by shippers over the state of the law under which they are held bound to know the legal rate applicable to any proposed shipment, without, as a matter of fact, having any certain means of actually ascertaining such rate. It has been suggested that to meet this grievance carriers should be required, upon application by a shipper, to quote the legal rate in writing, and that the shipper should be protected in acting upon the rate thus quoted; but the objection to this suggestion is that it would afford a much too easy method of giving to favored shippers unreasonable preferences and rebates. I think that the law should provide that a carrier, upon written request by an intending shipper, should quote in writing the rate or charge applicable to the proposed shipment under any schedules or tariffs to which such carrier is a party, and that if the party making such request shall suffer damage in consequence of either refusal or omission to quote the proper rate, or in consequence of a misstatement of the rate, the carrier shall be liable to a penalty in some reasonable amount, say two hundred and fifty dollars, to accrue to the United States and to be recovered in a civil action brought by the appropriate district attorney. Such a penalty would compel the agent of the carrier to exercise due diligence in quoting the applicable legal rate, and would thus afford the shipper a real measure of protection, while not opening the way to collusion and the giving of rebates or other unfair discrimination.

Under the existing law the commission can only act with respect to an alleged excessive rate or unduly discriminatory practice by a carrier on a complaint made by some individual affected thereby. I see no reason why the commission should not be authorized to act on its own initiative as well as upon the complaint of an individual in investigating the fairness of any existing rate or practice; and I recommend the amendment of the law to so provide; and also that the commission shall be fully empowered, beyond any question, to pass upon the classifications of commodities for purposes of fixing rates, in like manner as it may now do with respect to the maximum rate applicable to any transportation.

Under the existing law the commission may not investigate an increase in rates until after it shall have become effective; and although one or more carriers may file with

the commission a proposed increase in rates or change in classifications, or other alteration of the existing rates or classifications, to become effective at the expiration of thirty days from such filing, no proceeding can be taken to investigate the reasonableness of such proposed change until after it becomes operative. On the other hand, if the commission shall make an order finding that an existing rate is excessive and directing it to be reduced, the carrier affected may by proceedings in the courts stay the operation of such order of reduction for months and even years. It has, therefore, been suggested that the commission should be empowered, whenever a proposed increase in rates is filed, at once to enter upon an investigation of the reasonableness of the increase and to make an order postponing the effective date of such increase until after such investigation shall be completed. To this much objection has been made on the part of carriers. They contend that this would be, in effect, to take from the owners of the railroads the management of their properties and to clothe the Interstate Commerce Commission with the original rate-making power—a policy which was much discussed at the time of the passage of the Hepburn Act in 1905-6, and which was then and has always been distinctly rejected; and in reply to the suggestion that they are able by resorting to the courts to stay the taking effect of the order of the commission until its reasonableness shall have been investigated by the courts, whereas the people are deprived of any such remedy with respect to action by the carriers, they point to the provision of the interstate-commerce act providing for restitution to the shippers by carriers of excessive rates charged in cases where the orders of the commission reducing such rates are affirmed. It may be doubted how effective this remedy really is. Experience has shown that many, perhaps most, shippers do not resort to proceedings to recover the excessive rates which they may have been required to pay, for the simple reason that they have added the rates paid to the cost of the goods and thus enhanced the price thereof to their customers, and that the public has in effect paid the bill. On the other hand, the enormous volume of transportation charges, the great number of separate tariffs filed annually with the Interstate Commerce Commission, amounting to almost 200,000, and the impossibility of any commission supervising the making of tariffs in advance of their becoming effective on every transportation line within the United States to the extent that would be necessary if their active concurrence were required in the making of every tariff, has satisfied me that this power, if granted, should be conferred in a very limited and restricted form. I therefore recommend that the Interstate Commerce Commission be empowered, whenever any proposed increase of rates is filed, at once, either on complaint or of its own motion, to enter upon an investigation into the reasonableness of such change, and that it be further empowered, in its discretion, to postpone the effective date of such proposed increase for a period not exceeding sixty days beyond the date when such rate would take effect. If within this time it shall determine that such increase is unreasonable, it may then, by its order, either forbid the increase at all or fix the maximum beyond which it shall not be made. If, on the other hand, at the expiration of this time, the commission shall not have completed its investigation, then the rate shall take effect precisely as it would under the existing law, and the commission may continue its investigation with such results as might be realized under the law as it now stands.

The claim is very earnestly advanced by some large associations of shippers that shippers of freight should be empowered to direct the route over which their shipments should pass to destination, and in this connection it has been urged that the provisions of section 15 of the interstate-commerce act, which now empowers the commission, after hearing on complaint, to establish through routes and maximum joint rates to be charged, etc., when no reasonable or satisfactory through route shall have been already established, be amended so as to empower the commission to take such action, even when one existing reasonable and satisfactory route already exists, if it be possible to establish additional routes. This seems to me to be a reasonable provision. I know of no reason why a shipper should not have the right to elect between two or more established through routes to which the initial carrier may be a party, and to require his shipment to be transported to destination over such of such routes as he may designate for that purpose, subject, however, in the exercise of this right to such reasonable regulations as the Interstate Commerce Commission may prescribe.

The Republican platform of 1908 declared in favor of amending the interstate-commerce law, but so as always to maintain the principle of competition between naturally competing lines, and avoiding the common control of such lines by any means whatsoever. One of the most potent means of exercising such control has been through the holding of stock of one railroad company by another company owning a competing line. This condition has grown up under express legislative power conferred by the laws of many States, and to attempt now to suddenly reverse that policy so far as it affects the ownership of stocks heretofore so acquired would be

to inflict a grievous injury, not only upon the corporations affected, but upon a large body of the investment holding public. I, however, recommend that the law shall be amended so as to provide that from and after the date of its passage no railroad company subject to the interstate-commerce act shall, directly or indirectly, acquire any interests of any kind in capital stock, or purchase or lease any railroad of any other corporation which competes with it respecting business to which the interstate-commerce act applies. But especially for the protection of the minority stockholders in securing to them the best market for their stock I recommend that such prohibition be coupled with a proviso that it shall not operate to prevent any corporation which, at the date of the passage of such act, shall own not less than one-half of the entire issued and outstanding capital stock of any other railroad company, from acquiring all or the remainder of such stock; nor to prohibit any railroad company which at the date of the enactment of the law is operating a railroad of any other corporation under lease, executed for a term of not less than twenty-five years, from acquiring the reversionary ownership of the demised railroad; but that such provisions shall not operate to authorize or validate the acquisition, through stock ownership or otherwise, of a competing line or interest therein in violation of the antitrust or any other law.

The Republican platform of 1908 further declares in favor of such national legislation and supervision as will prevent the future overissue of stocks and bonds by interstate carriers, and in order to carry out its provisions I recommend the enactment of a law providing that no railroad corporation subject to the interstate-commerce act shall hereafter for any purpose connected with or relating to any part of its business governed by said act, issue any capital stock without previous or simultaneous payment to it of not less than the par value of such stock, or any bonds or other obligations (except notes maturing not more than one year from the date of their issue), without the previous or simultaneous payment to such corporation of not less than the par value of such bonds, or other obligations, or, if issued at less than their par value, then not without such payment of the reasonable market value of such bonds or obligations as ascertained by the Interstate Commerce Commission; and that no property, services, or other thing than money, shall be taken in payment to such carrier corporation, of the par or other required price of such stock, bond or other obligation, except at the fair value of such property, services or other things as ascertained by the commission; and that such act shall also contain provisions to prevent the abuse by the improvident or improper issue of notes maturing at a period not exceeding twelve months from date, in such manner as to commit the commission to the approval of a larger amount of stock or bonds in order to retire such notes than should legitimately have been required.

Such act should also provide for the approval by the Interstate Commerce Commission of the amount of stock and bonds to be issued by any railroad company subject to this act upon any reorganization, pursuant to judicial sale or other legal proceedings, in order to prevent the issue of stock and bonds to an amount in excess of the fair value of the property which is the subject of such reorganization.

I believe these suggested modifications in and amendments to the interstate-commerce act would make it a complete and effective measure for securing reasonableness of rates and fairness of practices in the operation of interstate railroad lines, without undue preference to any individual or class over any others; and would prevent the recurrence of many of the practices which have given rise in the past to so much public inconvenience and loss.

By my direction the Attorney-General has drafted a bill to carry out these recommendations, which will be furnished upon request to the appropriate committee whenever it may be desired.

The bill under consideration, H. R. 17536, was introduced by Mr. Townsend on January 10 last, and as introduced is the bill drafted by the Attorney-General and referred to in the message of the President.

Your committee gave extended hearings on the subject-matter of this and other bills concerning amendments to the interstate-commerce act and relating to regulation of common-carrier corporations, and took a large amount of testimony, which has been printed by order of the committee and which has proven of great benefit in the consideration of the bill.

After the hearings before the committee were closed, the committee took the bill up for consideration, section by section and line by line. During the course of the hearings and the consideration in your com-

mittee it became evident that many amendments to the bill were desirable. A number of amendments were suggested by the Attorney-General, who had drafted the original bill itself. Many amendments to the text of the original bill were agreed to by your committee in the consideration of the bill.

So many changes were made in the text of the original bill that, in order to avoid confusion, the committee has reported the bill back to the House with the recommendation that the bill be amended by striking out all after the enacting clause and inserting as a substitute, by way of amendment, the text of the bill as changed and agreed to in the committee. This amendment and the amendment to the title of the bill, recommended by your committee, are hereinafter set forth under proper heading.

BILL AS REPORTED.

Attached to and made a part of this report is also a copy of the original bill (H. R. 17536), showing the changes made in the original text of the bill by the substitute bill herewith reported, the new language being shown in italics and the language omitted being shown by a line drawn through the parts stricken out.

Attached to and made a part of this report is also the text of the substitute recommended compared with the existing act to regulate commerce as amended, the existing law being set forth in roman type, with the parts omitted stricken out and the new language proposed by the substitute printed in italics.

In this way the report of your committee shows: First, the way the bill would read if the substitute amendment recommended by your committee be enacted into law in that form; second, the changes recommended by your committee from the original bill (H. R. 17536); and, third, changes in and additions proposed to the existing law.

RAILWAY REGULATION.

Different theories have been entertained as to the control and regulation by governments of the means of transportation.

One theory is that the government itself shall own, control, and operate the transportation facilities, which, as applied to our country, would involve government ownership and operation, either by the General Government or by the state governments or by the two together or separately.

Another theory is that the facilities of transportation shall be left wholly to development by private parties for gain, and that the private owners of such transportation facilities shall be permitted to exercise control over their own operations, leaving to the natural forces of competition such regulation as may be required.

Another theory is that government, having granted to private persons or corporations certain rights, such as the right of eminent domain, shall commit the construction, control, ownership, and operation of railroads and other facilities of transportation to private owners, with the power exercised on the part of the government to regulate the methods used by the owners and operators of such transportation facilities, including the right to regulate the charges to be made and the facilities afforded. The latter is the theory adopted by most, if not all, of our state governments and

adopted by the General Government through the passage, in 1887, of the law known as "The act to regulate commerce." Amendments to this law have been enacted at different times, but the principal amendment is known as the Hepburn law, which was passed June 30, 1906.

In the exercise of its power, and following its determination to regulate interstate railroads, Congress has proceeded with deliberation and caution, accumulating knowledge and gaining light through experience.

The original act to regulate commerce was decisive of the fundamental proposition that the General Government should exercise a regulative control over those railroad corporations engaged in interstate or foreign commerce. The Hepburn law of 1906 vastly improved the law providing for this control and much enlarged the scope of the authority conferred upon the Interstate Commerce Commission. The experience gained through execution of the law shows, however, that some important matters which should be the subject of governmental control are not now within the scope of authority heretofore conferred upon the commission. The original act to regulate commerce was exceedingly important, the Hepburn law was of still greater importance, but the propositions involved in the substitute bill reported by your committee are of even greater importance. To enumerate the propositions is in the main sufficient to show their importance. In a general way, however, it suffices to say that while they do not impose undue burdens upon the railways of the country or unduly interfere with the power of the railway managers for the proper operation of the roads, yet they do confer upon the shipping public, the investing public, and the people at large benefits of tremendous value.

COMMERCE COURT.

The first three sections of the substitute relate to the creation of the commerce court (referred to in the original bill as the court of commerce). It is proposed by the bill to create a commerce court, composed of five judges, the main jurisdiction of which court shall be over all suits brought to enforce or to enjoin or set aside orders of the Interstate Commerce Commission, and certain other suits brought in accordance with the act to regulate commerce, and the Elkins Act; but in the amendment recommended by your committee it is expressly provided that the creation of this court shall not be construed as giving to the commerce court any greater jurisdiction than is now possessed by the circuit courts of the United States over similar matters. In other words, by the substitute bill, it is proposed to centralize the existing authority and jurisdiction of circuit courts in one commerce court, but without enlarging such jurisdiction or authority.

The present jurisdiction of the United States courts to set aside orders entered by the Interstate Commerce Commission under the act to regulate commerce is believed by many to be limited to the determination of jurisdictional facts and to the question of confiscation by the taking of property without due compensation; and the substitute bill as reported by your committee carefully provides that such jurisdiction of the courts, if now so limited, shall not be enlarged in the commerce court.

SECTIONS 4 AND 5.

Sections 4 and 5 provide that suits which heretofore have been brought by or against the Interstate Commerce Commission shall hereafter be brought by or against the United States, and that the Attorney-General shall represent the United States in all such proceedings. At present when the Interstate Commerce Commission makes an order under the act to regulate commerce and a suit is brought to enjoin or set aside such order, the commission is made a party defendant. And under the existing law the Interstate Commerce Commission may institute an inquiry, have its own attorneys prepare and try the case before the commission, and then, if an order be entered, the commission is sued and is required to defend the order entered. Under the bill reported, if a suit be brought to set aside the order of the commission, it will be brought against the United States and defended by the Attorney-General, who is, however, authorized by the bill to employ special attorneys, including the attorneys of the Interstate Commerce Commission who tried the case before the commission, and there is also inserted the provision that the parties in interest, such as shippers, organizations, or municipalities, before the commission, may be represented by their own counsel in the court proceedings where the order of the commission is attacked.

SECTION 6.

Section 6 provides for the disposition of cases which may arise or be in progress before the opening of the commerce court.

ENLARGING THE POWER OF THE COMMISSION OVER RAILROAD REGULATIONS AND PRACTICES.

Section 6a provides for an amendment of the existing section 1 of the interstate commerce act, by making it the duty of common carriers to provide reasonable facilities for operating through routes and to exchange, interchange, and return cars used therein; and to establish, observe, and enforce just and reasonable classifications of property for transportation and just and reasonable regulations and practices affecting classifications, rates, tariffs, the issuance, form, and substance of tickets, receipts and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property necessary or convenient to secure the safe and prompt receipt, handling, transportation, and delivery of property upon just and reasonable terms.

There are certain other amendments to section 1 of the law, shown in the copy of the bill hereto attached, designed to show changes from the existing law. One of these extends the jurisdiction of the Interstate Commerce Commission over railroads in Alaska.

LONG-AND-SHORT-HAUL CLAUSE.

Section 6b proposes an amendment to section 4 of the interstate commerce act in relation to charges for long and short hauls. The existing law provides that the carrier shall not charge greater com-

compensation "under substantially similar circumstances and conditions" for a shorter than for a longer distance over the same line in the same direction, but authorizes the commission in special cases to relieve the carrier from the operation of this provision. The courts have so construed the meaning of the words "under substantially similar circumstances and conditions" as to practically deprive section 4 of the existing law of real vitality. In the substitute recommended by your committee section 4 of the existing law is amended so as to leave out the words "under substantially similar circumstances and conditions" and to prohibit a carrier from receiving greater compensation for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance, or to receive a greater compensation as a through route than the aggregate of the local rates, but authorizing the Interstate Commerce Commission to relieve a carrier upon application from the operation of this section: and in order not to unduly disturb existing conditions in an abrupt manner the amendment further provides that no rates or charges lawfully existing at the time of the passage of the proposed act shall be required to be changed by reason of this section prior to the expiration of six months after the passage of the act, nor until any application made with the commission shall have been determined.

AGREEMENTS BETWEEN COMMON CARRIERS.

Section 7 of the original bill, with the amendments agreed to by your committee and now reported as section 7 of the substitute, authorizes common carriers to enter into agreements, specifying the classifications of freight and the charges for transporting passengers and freight, notwithstanding existing laws, including the Sherman antitrust law, if a copy of the agreement in such form and in such detail as the Interstate Commerce Commission may prescribe is filed with the Interstate Commerce Commission within twenty days after it is made and at least thirty days before the classification or charge referred to goes into effect. The commission is, however, given as full authority over the classifications and charges provided for in such agreements as it has over any other charge or classification, including the right upon application to suspend the taking effect of the proposed charge or classification, in accordance with another provision of the bill; but it is expressly provided that in making such agreements between carriers the carrier shall not make any agreement for the pooling or division of traffic or the pooling or division of earnings under penalty.

FURNISHING RATE ON APPLICATION.

Section 8 proposes to add to section 6 of the existing interstate-commerce act a provision requiring a common carrier upon written request to state correctly to the applicant the tariff rate on a proposed shipment between stated places under a penalty for making an erroneous quotation of the rate. This penalty shall accrue to the United States and be recovered in a civil action brought by the United States. The bill does not provide for any redress to the shipper who may have suffered loss on account of an erroneous

quotation of the tariff rate, for the reason that it has so far seemed impracticable to find any method of so doing without opening a loophole for the allowance of secret rebates in such manner as would be practically unprovable in criminal proceedings.

There is also an amendment to section 6 of the existing interstate-commerce act subjecting carriers who fail to comply with regulations issued by the Interstate Commerce Commission as to the form of tariff sheets, etc., to a penalty.

SECTION 8A.

Section 8a provides for an amendment to section 10 of the existing interstate-commerce act, designed to strengthen the law forbidding rebates.

COMPLAINTS BEFORE THE INTERSTATE COMMERCE COMMISSION.

Section 8b amends section 13 of the existing interstate commerce act by authorizing the commission to institute an inquiry on its own motion as to any matter concerning which complaint is authorized to be made by others before the commission, or relating to the enforcement of any provision of the act to regulate commerce, and giving to the commission full power and authority to proceed with its own inquiry as though it had been appealed to by formal complaint. The amendments to this section also considerably enlarge the scope of complaints which may be made before the commission, and authorize complaints not only as to the rates charged for transportation, but also as to any classification, or relating to or affecting any regulation or practice of the carrier, or the failure of the carrier to establish, observe, and enforce just and reasonable classifications and just and reasonable regulations and practices concerning all the matters enumerated in section 1 of the act to regulate commerce, including those proposed to be inserted by the substitute bill.

INCREASING THE SUBJECT-MATTERS CONCERNING WHICH THE COMMISSION MAY MAKE ORDERS.

Section 9 proposes to amend section 15 of the act to regulate commerce. Section 15 of the act to regulate commerce is the section under which orders of the commission in regard to rates are now made. Under the provisions of section 15, as it now stands, the authority of the commission to enter an order is confined to the subject-matter of rates for transportation and regulations or practices "affecting such rates" and the establishment of through routes where "no reasonable or satisfactory through route exists." As recommended to be amended by your committee, section 15 of the present law will have its scope largely increased and the jurisdiction of the commission will be much enlarged.

Under the section as reported, the commission is given jurisdiction to enter orders not only in regard to rates, but also in regard to classifications, regulations, or practices, whether they affect rates or not, and to determine what are proper classifications, regulations, and practices, in addition to rates, and to require the carriers not

only to follow the rate which may be fixed by the order of the commission, but also to adopt the classification and conform to and establish, observe, and enforce the regulation or practice prescribed by the commission, and this provision should be read in connection with the amendment recommended by your committee to sections 1 and 13 of the existing interstate-commerce act.

It is also provided in the amended section 15, recommended, that the commission make a separate terminal, switching, icing, storage, elevation, or other special charge from the through rate, which now includes such special charge, and prescribe the maximum rates, which in the aggregate or separately in such case are just and reasonable.

SUSPENSION OF PROPOSED RATES.

It is also provided in this section, as an amendment to the existing law, that where a carrier files with the commission a proposed new tariff rate, the commission may suspend the taking effect of the new rate, classification, regulation, or practice, for a period of one hundred and twenty days beyond the time when it would otherwise go into effect.

ESTABLISHMENT OF THROUGH ROUTES.

Under the existing law the commission is given authority to establish through routes and rates "provided, no reasonable or satisfactory through route exists." Under the amended section as reported by your committee it is proposed to strike out of the existing law "provided, no reasonable or satisfactory through route exists" and authorize the commission to establish through routes and joint classifications and joint rates. But, as this provision will very greatly increase the power of the Interstate Commerce Commission in the establishment of through routes where water lines form parts of the through routes it is provided by the amended section reported that "this act shall not be construed to affect traffic originating and ending on the line of any water carrier and transported wholly by water, and shall not be held to affect the limitation of liability of water carriers, as now provided by law."

The original bill as introduced provided that the commission should not establish any through route, classification, or rate between street, suburban, or interurban electric passenger railroads and railroads of a different character. In the substitute bill, as recommended by your committee, this provision is stricken out and the section as recommended will authorize the commission to establish through routes, classifications, and rates, including both steam and electric roads engaged in interstate commerce; but a question having arisen as to whether the commission under such provision might not have the authority to require a through freight route which would provide for carrying freight on street railways into and through the heart of cities, there is inserted the provision that the commission shall not, however, in establishing any through route, classification, or rate, include a street electric passenger railway not engaged in the general business of transporting freight in addition to its passenger business.

ROUTING OF FREIGHT.

It is also provided in this section, as reported back to the House, that the consignor of freight under exceptions and regulations prescribed by the commission shall have the right to designate in writing, where there are two or more through routes, by which of such through routes his property shall be transported to destination.

SECTION 10.

Section 10 proposes to amend section 16 of the act to regulate commerce so as to conform with the idea of a commerce court to supersede the present jurisdiction of the circuit courts over suits to enjoin or enforce orders of the commission.

SECTION 11.

Section 11 proposes to amend section 20 of the interstate-commerce act by enlarging the powers of the commission in regard to reports made by the common carriers to the commission.

THE CONSOLIDATION OF RAILROADS.

Section 12 of the substitute bill forbids a railroad company from purchasing or leasing or acquiring the capital stock of another railroad or water carrier line which is directly and substantially competitive with it, and puts a similar prohibition upon a water carrier corporation. The section also prohibits railroad or water carrier corporations which are directly and substantially competitive from having, after July 1, 1911, the same person as an officer or director of any two of such competing corporations, and a sufficient penalty is inflicted for violation of the section. The section further provides, however, that if any such corporation desires to purchase or lease or acquire interest in the capital stock of another similar corporation it may make a preliminary agreement and then file its petition for permission to carry out such agreement and to have a determination whether the corporations are in fact directly and substantially competitive. Nothing in this act validates any act prohibited by the Sherman antitrust law or affects any pending action or the rights of any party under such act. And the right to appeal to the commerce court is denied to any carrier now involved in any suit under the provisions of the antitrust law. In reporting the substitute bill to the House the committee has provided that the application for permission to purchase, lease, or acquire capital stock in another corporation shall be made to the commerce court; but the committee is giving consideration to the question, with the possible view of reporting a committee amendment, as to whether such application should be made to the Interstate Commerce Commission in place of the commerce court.

RAILWAY SECURITIES.

Section 13 of the bill provides that no railroad company shall issue any stock or bonds except upon application to the Interstate Commerce Commission, which shall render a decision specifying the respective amounts of stock, bonds, etc., authorized to be issued for the respective purposes to which the proceeds are to be applied and stating the price at which such securities may be sold, which price

shall be their reasonable value. The various provisions of the section carrying into effect this general proposition will be found in full by examination of the section itself.

Section 14 of the substitute bill treats of the issuance of securities upon the reorganization of a railroad which is in the hands of a receiver or subject to be sold in any judicial proceeding, and provides that the amount of stock issued in such reorganization shall not exceed the fair estimated value of the property which shall be ascertained by the Interstate Commerce Commission. It is also provided in the section that in a merger or consolidation of two or more railroad corporations, stock to be issued by the consolidated corporation and the bonds and other obligations to be assumed and issued by it shall not exceed the fair estimated value of the properties of the consolidated corporation.

And in section 15 provision is made for the issuance of the certificates in relation to stocks and bonds by the Interstate Commerce Commission, and also a penalty is imposed on any director, officer, or stockholder who knowingly and willfully assents to or concurs in any issue of securities forbidden by the provisions of the act.

The stock and bond proposition in the original text of H. R. 17536 was included as section 13. Subsequently new propositions were prepared and submitted by the Attorney-General relating to this subject-matter. These propositions have been carefully considered and considerably changed in the consideration by your committee, and your committee has now reported as a part of its substitute bill sections 13, 14, and 15 of the substitute bill in lieu of section 13 of the original Townsend bill.

**SUBSTITUTE AMENDMENT RECOMMENDED BY THE COMMITTEE
TO H. R. 17536.**

COMMITTEE AMENDMENTS.

Strike out all after the enacting clause and insert the following:

That a court of the United States is hereby created which shall be known as the commerce court and shall have the jurisdiction now possessed by circuits courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act to further regulate commerce with foreign nations and among the States, approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States. Nothing hereinbefore contained in this Act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, which is hereby transferred to and vested in the commerce court.

The jurisdiction of the commerce court over cases of the foregoing classes shall be exclusive; but this Act shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

The commerce court shall be a court of record, and shall have a seal of such form and style as the court may prescribe. The said court shall be composed of five judges, to be from time to time designated and assigned thereto by the Chief Justice of the United States from among the circuit judges of the United States, for the period of five years, except that in the first instance the court shall be composed of the five additional circuit judges to be appointed as hereinafter provided, who shall be designated by the President to serve for one, two, three, four, and five years, respectively, in order that the period of designation

of one of the said judges shall expire in each year thereafter. In case of the death, resignation, or termination of assignment of any judge so designated, the Chief Justice shall designate a circuit judge to fill the vacancy so caused and to serve during the unexpired period for which the original designation was made. After the year nineteen hundred and fourteen no circuit judge shall be redesignated to serve on the commerce court until the expiration of at least one year after the expiration of the period of his last previous designation. The judge first designated for the five-year period shall be the presiding judge of said court, and thereafter the judge senior in commission shall be the presiding judge.

Each of the judges during the period of his service in the commerce court shall, on account of the regular sessions of the court being held in the city of Washington, receive in addition to his salary as circuit judge an expense allowance at the rate of two thousand dollars per annum. The President shall, by and with the advice and consent of the Senate, appoint five additional circuit judges, no two of whom shall be from the same judicial circuit, who shall hold office during good behavior and who shall be from time to time designated and assigned by the Chief Justice of the United States for service in the circuit court for any district, or the circuit court of appeals for any circuit, or in the commerce court.

The associate judges shall have precedence and shall succeed to the place and powers of the presiding judge whenever he may be absent or incapable of acting in the order of the date of their commissions. Four of said judges shall constitute a quorum, and at least a majority of the court shall concur in all decisions.

The court shall also have a clerk and a marshal, with the same duties and powers, so far as they may be appro-

priate and are not altered by rule of the court, as are now possessed by the clerk and marshal, respectively, of the Supreme Court of the United States. The offices of the clerk and marshal of the court shall be in the city of Washington, in the District of Columbia. The judges of the court shall appoint the clerk and marshal, and may also appoint, if they find it necessary, a deputy clerk and deputy marshal; and such clerk, marshal, deputy clerk, and deputy marshal shall hold office during the pleasure of the court. The salary of the clerk shall be four thousand dollars per annum; the salary of the marshal three thousand dollars per annum; the salary of the deputy clerk two thousand five hundred dollars per annum; and the salary of the deputy marshal two thousand five hundred dollars per annum. The said clerk and marshal may, with the approval of the court, employ all requisite assistance. The costs and fees in said court shall be established by the court in a table thereof, approved by the Supreme Court of the United States, within four months after the organization of the court; but such costs and fees shall in no case exceed those charged in the Supreme Court of the United States, and shall be accounted for and paid into the Treasury of the United States.

The commerce court shall be always open for the transaction of business. Its regular sessions shall be held in the city of Washington, in the District of Columbia: but the powers of the court or of any judge thereof, or of the clerk, marshal, deputy clerk, or deputy marshal may be exercised anywhere in the United States; and for expedition of the work of the court and the avoidance of undue expense or inconvenience to suitors the court shall hold sessions in different parts of the United States as may be found desirable. The actual and necessary expenses of the judges, clerk, marshal, deputy clerk, and deputy mar-

shal of the court incurred for travel and attendance elsewhere than in the city of Washington shall be paid upon the written and itemized certificate of such judge, clerk, marshal, deputy clerk, or deputy marshal by the marshal of the court, and shall be allowed to him in the statement of his accounts with the United States.

The United States marshals of the several districts outside of the city of Washington in which the commerce court may hold its sessions shall provide, under the direction and with the approval of the Attorney-General of the United States, such rooms in the public buildings of the United States as may be necessary for the court's use; but in case proper rooms can not be provided in such public buildings, said marshals, with the approval of the Attorney-General of the United States, may then lease from time to time other necessary rooms for the court.

If, at any time, the business of the commerce court does not require the continuous services of all the judges, the Chief Justice of the United States may, by writing, signed by him and filed in the Department of State, terminate the assignment of any of the judges or temporarily assign him for service in any circuit court or circuit court of appeals. In case of illness or other disability of any judge assigned to the commerce court, the Chief Justice of the United States may assign any other circuit judge of the United States to act in his place, and may terminate such assignment when the exigence therefor shall cease; and any circuit judge so assigned to act in place of such judge shall, during his assignment, exercise all the powers and perform all the functions of such judge.

In all cases within its jurisdiction the commerce court, and each of the judges assigned thereto, shall, respectively, have and may exercise any and all of the powers of a circuit court of the United States and of the judges of said

court, respectively, so far as the same may be appropriate to the effective exercise of the jurisdiction hereby conferred. The commerce court may issue all writs and process appropriate to the full exercise of its jurisdiction and powers and may prescribe the form thereof. It may also, from time to time, establish such rules and regulations concerning pleading, practice, or procedure in cases or matters within its jurisdiction as to the court shall seem wise and proper. Its orders, writs, and process may run, be served, and be returnable anywhere in the United States; and the marshal and deputy marshal of said court and also the United States marshals and deputy marshals in the several districts of the United States shall have like powers and be under like duties to act for and in behalf of said court as pertain to United States marshals and deputy marshals generally when acting under like conditions concerning suits or matters in the circuits of the United States.

The jurisdiction of the commerce court shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the commerce court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice. In case a defendant to such petition can not be found within the district of his last-known residence or place of business, and the marshal shall so return, service of the petition may be made in the manner provided in section eight of the Act entitled "An

Act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from state courts, and for other purposes," approved March third, eighteen hundred and seventy-five. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing and not by demurrer. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court; and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this Act, or by rule of the court, the practice and procedure in the commerce court shall conform as nearly as may be to that in like cases in a circuit court of the United States.

SEC. 2. That final judgment or decree of the commerce court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a circuit court of the United States to the Supreme Court, and the commerce court may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may

affirm, reverse, or modify the final judgment or decree of the commerce court as the case may require.

Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the commerce court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require.

Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court.

SEC. 3. That suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the commerce court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the commerce court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. No order or injunction so restraining or suspending an order of the Interstate Commerce Commission shall be made by the commerce court otherwise than upon notice and after hearing, except that in cases where irreparable damage would otherwise ensue to the petitioner, said court, or a judge thereof may allow a temporary stay or suspension in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of his order, pending application to the court for its order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judge making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The

court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until its decision upon the application.

SEC. 4. That from and after the passage of this Act all cases and proceedings in the commerce court which, but for this Act would be brought by or against the Interstate Commerce Commission shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the commerce court whenever, though it has not been made a party, public interests are involved.

SEC. 5. That the Attorney-General shall have charge, and control, of the interests of the Government in all cases and proceedings in the commerce court and in the Supreme Court of the United States upon appeal from the commerce court; and if in his opinion the public interest requires it, may retain and employ in the name of the United States such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney-General shall stipulate with such special attorneys and counsel the amount of their compensation and shall have supervision of their action: *Provided*, That parties in interest to the proceeding before the commission, in which an order or requirement is made, may appear and be represented by their counsel, upon such terms as the court may prescribe, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; but such appearance and representation shall not interfere with the control of the case by the Attorney-General, and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matter of pro-

cedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits.

SEC. 6. That until the opening of the commerce court as in section one hereof provided, all cases and proceedings of which from that time the commerce court is hereby given exclusive jurisdiction may be brought in the same courts and conducted in like manner and with like effect as is now provided by law; and if any such case or proceeding shall have gone to final judgment or decree before the opening of said court, appeal may be taken from such final judgment or decree in like manner and with like effect as is now provided by law. Any such case or proceeding within the jurisdiction of the commerce court which may have been begun in any other court as hereby allowed before the said date shall be forthwith transferred to the commerce court, if it has not yet proceeded to final judgment or decree in such other court unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in the circuit court to final judgment or decree and further proceeding thereafter, and appeal may be taken direct to the Supreme Court, and if remanded such cause may be sent back to the circuit court or to the commerce court for further proceeding as the Supreme Court shall direct; and all previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the commerce court and to the same right of subsequent action in the case or proceeding as if the transferred case or proceeding had been originally begun in the commerce court. The clerk of the court from which any case or proceeding is so transferred to the commerce court shall transmit to and file in the commerce court the originals of all papers filed in such case or proceeding and a certified transcript of all

record entries in the case or proceeding up to the time of transfer.

SEC. 6a. That section one of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby now amended so as to read as follows :

"SECTION 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act. and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or from one place in a Territory or District to another place in the same Territory or District, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States. and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.

"The term 'common carrier' as used in this Act shall include express companies and sleeping-car companies.

The term 'railroad' as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit; ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes, and to exchange, interchange, and return cars used therein, and to make reasonable rules and regulations with respect thereto and for operation of such through routes, and providing for reasonable compensation to those entitled thereto, for the use of, injury to, destruction or loss of any of such cars on the line of any carrier operating a part of such through or joint routes.

“ All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for

such service or any part thereof is prohibited and declared to be unlawful.

“ And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this Act which may be necessary or convenient to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful.

“ No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies

or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary care takers of live stock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *Provided further*, That the term 'employees' as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hun-

dred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

“ From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

“ Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to

install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad may make complaint to the commission, as provided in section thirteen of this Act, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the commission, other than orders for the payment of money.”

SEC. 6b. That section four of said Act to regulate commerce be amended so as to read as follows:

“SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the local rates; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time

to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: *Provided further*, That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.’’

SEC. 7. That section five of said Act to regulate commerce, as heretofore amended, is hereby now amended so as to read as follows:

“Agreements between common carriers subject to this Act specifying the classifications of freight and the rates, fares, and charges for transportation of passengers and freight which they agree to establish shall not be unlawful under this Act as amended or under the Act approved July second, eighteen hundred and ninety, entitled ‘An Act to protect trade and commerce against unlawful restraints and monopolies,’ or otherwise if a copy of such agreement in such form and in such detail as the commission may prescribe is filed with the Interstate Commerce Commission within twenty days after it is made, and before or when any schedule of any rate, fare, or charge, or any classification made pursuant to the agreement is filed with the commission; but all provisions of this Act as amended, and any future amendments thereof shall apply to such agreed rates, fares, and charges, and such agreed classifications, and the Interstate Commerce Commission shall have like control over and power of action concerning any agreed rate, fare, charge, or classification, including suspension of the rate or classification before it becomes effective, and pending investigation of its propriety, as if

the rate, fare, charge, or classification had been made without agreement, and any party to such agreement may cancel it as to all or any of the agreed rates, fares, charges, or classifications by thirty days' notice in writing to the other parties and to the Interstate Commerce Commission, and such agreement of carriers, though filed with the commission, shall not be deemed a tariff or schedule of rates, fares, or charges collectible from the public, or operate itself to alter any such tariff or schedule whensoever filed and published. But it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of traffic of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of traffic as aforesaid each day of its continuance shall be deemed a separate offense."

SEC. 8. That section six of said Act to regulate commerce, as heretofore amended, is hereby now amended by adding three new paragraphs at the end thereof, as follows :

"In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

"If any common carrier subject to this Act, after written request made upon the agent of such carrier hereinafter

in this section referred to by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

“It shall be the duty of every such common carrier to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request in substantially the following form: ‘The Station Agent of the ——— Company at ——— Station,’ together with the name of the proper post-office, inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any post-office.”

SEC. 8a. That section ten of said Act to regulate commerce, as heretofore amended, be now amended so as to read as follows:

“SEC. 10. That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

“Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or

employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

“ Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the

same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement, or entry, obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.

“If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the peniten-

tiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense ; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.”

SEC. 8b. That section thirteen of said Act to regulate commerce be amended so as to read as follows :

“SEC. 13. That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier, subject to the provisions of this Act, in contravention of the provisions thereof, or relating in any way to the rates demanded, charged, or collected by any common carrier, subject to the provisions of this Act, for the transportation of persons or property, as defined in section one of this Act; or relating to or affecting any classification of property with reference to which such rates exist, or relating to or affecting any regulations or practices whatsoever of such carrier, or of the failure of such carrier to establish, observe, and enforce just and reasonable classifications of property and just and reasonable regulations and practices, as required by section one of this Act may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission. If such common carrier within the

time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

“Said commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act, by any common carrier, subject to its provisions or the enforcement of any authority granted by this Act to the said commission. And the said commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.”

SEC. 9. That section fifteen of said Act to regulate commerce, as heretofore amended, is hereby now amended so as to read as follows :

“SEC. 15. That whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or after full hearing under an order for investigation and hearing made by the commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act for the transportation of persons or property as defined in the first section of this Act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and establish, observe, and enforce the regulation or practice so prescribed. And where the action of the commission is with respect to terminal, switching, icing, storage, elevation, or other

special charges, which are only made when the through rate for the transportation is also imposed, and such special charges become part of the aggregate of charges for the entire service, the commission may consider such special charges separately or in connection with the total charges or rates and prescribe the maximum rates and charges which in the aggregate or separately are just and reasonable. All orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or modified or set aside by the commission, or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

“Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing

and the decision thereon the commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective.

“The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. But this Act shall not be construed to affect traffic originating and ending on the line of any water carrier and transported wholly by water and shall not be held to affect the limitation of liability of water carriers as now provided by law. The commission shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of trans-

porting freight in addition to their passenger business and railroads of a different character.

“In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment there are two or more through routes, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to such routing instructions.

“If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

“The foregoing enumeration of powers shall not exclude any power which the commission would otherwise have in the making of an order under the provisions of this Act.”

SEC. 10. That section sixteen of said Act to regulate commerce, as heretofore amended, is hereby now amended so as to read as follows :

“SEC. 16. That if, after hearing on a complaint made as provided in section thirteen of this Act, the commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

“If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims damages, and the order of the commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the commission within two years from the time the cause of action accrues, and not after, and a petition for the en-

forcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after: *Provided*, That claims accrued prior to the passage of this Act may be presented within one year.

“In such suits all parties in whose favor the commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants; and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

“Every order of the commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

“The commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

“It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

“Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either

of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

“The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

“It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

“The commission may employ such attorneys as it finds necessary for proper legal aid and service of the commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the commission's own instance or upon complaint; and the expenses of such employment shall be paid out of the appropriation for the commission.

“If any carrier fails or neglects to obey any order of the commission other than for the payment of money, while the same is in effect, any party injured thereby, or the United States, by its Attorney-General, may apply to the commerce court for enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience

to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

“The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the commission as required under the provisions of this Act and certificates issued by the commission in accordance with any provision of law shall be preserved as public records in the custody of the secretary of the commission, and shall be received as *prima facie* evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, reports, or certificates made public records as aforesaid, certified by the secretary, under the commission’s seal, shall be received in evidence with like effect as the originals.”

SEC. 11. That section twenty of said Act to regulate commerce, as heretofore amended, is hereby amended by striking out the following paragraph :

“Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail

to make and file said annual reports within the time above specified, or within the time extended by the commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the commission it shall be subject to the forfeitures last above provided ;”

And by inserting in lieu of the paragraph so stricken out the following :

“ Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the commission by order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the commission ; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall con-

tinue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided.”

SEC. 12. That no railroad corporation which is a common carrier subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, shall hereafter acquire, directly or indirectly, any interest of whatsoever kind in the capital stock of any railroad or water carrier corporation, or purchase or lease any railroad, or water line which is directly and substantially competitive with that of such first-named corporation, nor shall any water carrier corporation engaged in interstate commerce hereafter acquire, directly or indirectly, any interest of whatsoever kind in the capital stock of any railroad corporation, or purchase or lease any railroad, that is subject to the Act to regulate commerce and which is directly and substantially competitive with such water line; nor shall any such railroad or water carrier corporation have after the first day of July, nineteen hundred and eleven, as an officer or a director any person who may also be at the same time an officer or director of any such competing corporation; and any corporation which acquires any interest in capital stock, or which purchases or leases a railroad or water

line contrary to this section, or which holds or retains any interest in capital stock or in a railroad or water line hereafter acquired in violation of this section, or which shall have and retain as an officer or director after the first day of July, nineteen hundred and eleven, any person who is also an officer or director of any such competing corporation, shall be fined five thousand dollars for each day or part of day during which it holds or retains such interest unlawfully acquired, or retains such prohibited officer or director.

Any attempted acquisition of an interest in capital stock, or the purchase or lease of a railroad or water line, contrary to this section shall be void and may be enjoined by any court of competent jurisdiction at the suit of the United States; and the holding or retention of any interest in capital stock or the acquisition of a railroad or water line contrary to this section may likewise be enjoined in any court of competent jurisdiction at the suit of the United States; but any railroad or water carrier corporation, being a common carrier as aforesaid, which proposes to acquire any interest in the capital stock or to lease or purchase a railroad or water line of any other corporation may apply to the commerce court by its petition for that purpose, filed in advance of actual taking of such interest in capital stock or the acquisition of such railroad or water line, but after an agreement or contract for its acquisition has been made, with a stipulation therein that such agreement or contract shall take effect in case it is found by the commerce court not to violate this section, for an adjudication as between such corporation and the United States, whether or not the proposed acquisition of an interest in the capital stock or the proposed purchase or lease of the railroad or water line of another corporation violates this section, and the adjudication

of the commerce court upon such application shall have the ordinary effect of judgments as an estoppel between the parties.

The commerce court is hereby given jurisdiction to hear and determine such applications and to take all proper proceedings thereon; and the filing of said petition shall be taken as a consent on the part of the corporation making the application that the commerce court issue at once an interlocutory injunction against the proposed acquisition pending final determination by the court concerning its legality hereunder. If the commerce court finally adjudges the proposed transaction to be unlawful, it shall by its decree permanently enjoin the proposed acquisition. In case the United States shall have sued to restrain the proposed acquisition in a court other than the commerce court before the corporation proposing to make such acquisition files its petition as aforesaid in the commerce court, such suit of the United States shall be stayed pending the decision of the commerce court if it has not yet proceeded to final decree, and said suit of the United States shall be dismissed if the commerce court finally adjudges that the proposed acquisition does not violate this section: *Provided*, That nothing herein contained shall be construed to affect in any way any suit or action pending at the passage of this Act, nor the rights or liabilities of any party thereto, nor to authorize or validate the acquisition by a railroad corporation, being a common carrier subject to said Act to regulate commerce, as amended, of any interest in the capital stock, or the purchase or lease of the railroad or water line of any other railroad or water carrier company, in violation of any Act of Congress, including the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against

unlawful restraints and monopolies:” *And provided further*, That the right to so apply to said commerce court shall not extend to any railroad corporation now holding stock in any other railroad corporation in violation of any Act of Congress, including the said Act approved July second, eighteen hundred and ninety, which holding is the subject or in any way involved in any suit or action pending at the date of the passage of this Act.

SEC. 13. That a new section be added to said Act to regulate commerce, to be numbered as section twenty-five, as follows :

“SEC. 25. That no railroad corporation which is a common carrier subject to the provisions of this Act as amended shall hereafter issue for any purpose connected with or relating to any part of its business governed by the provisions of this Act as amended any stock, bonds, notes, or other evidences of indebtedness to an amount exceeding that which may from time to time be reasonably necessary for the purpose for which such issue of stock, bonds, notes, or other evidences of indebtedness may be authorized.

“The amount of said securities to be thus issued, excepting notes maturing not more than two years from the date of their issue, shall be determined by the Interstate Commerce Commission, and any sale of said securities shall be at a price not less than their reasonable value, which, excepting as to notes maturing not more than two years from the date of their issue, shall be ascertained and fixed by the commission. Said commission shall render a decision upon an application for such issue within thirty days after the final hearing thereon. Such decision shall be in writing, shall assign the reasons therefor, shall, if authorizing such issue, specify the respective amounts of stock, bonds, or notes or other

evidences of indebtedness as aforesaid which are authorized to be issued for the respective purposes to which the proceeds thereof are to be applied. A certificate of the decision of said commission shall, before the stock, bonds, or notes or other evidences of indebtedness as aforesaid are issued, be delivered to the corporation. Such corporation shall not apply the proceeds of such stock, bonds, or notes or other evidences of indebtedness as aforesaid to any purpose not specified in such certificate, and no property, services, or other thing than money shall be taken in payment to the corporation of the required price of such stock, certificate of stock, bond, or other evidence of indebtedness, except at the fair value of such property, services, or other thing than money, which shall be ascertained by the Interstate Commerce Commission and stated in a certificate issued by it to such corporation, or to any person or persons intending to form such corporation, and recorded with the commission before the issue of said stock, certificate of stock, or evidence of indebtedness: *Provided*, That nothing herein contained shall be construed to prevent a corporation subject to this Act from issuing its stock, bonds, or other obligations to refund bonds or other obligations heretofore or hereafter issued and outstanding to an amount reasonably necessary for that purpose determined as hereinbefore provided.

“No railroad corporation subject to the provisions of this Act as amended shall hereafter, for any purpose connected with or relating to any part of its business governed by this Act, issue any capital stock convertible into other capital stock of such railroad corporation unless by the terms of the certificate representing the stock so convertible the amount, par value, of capital stock that the holder of such certificate is entitled to receive in exchange therefor shall be equal to or less than the par value of

the shares of stock represented by such certificate of convertible stock; but nothing contained in this Act shall be deemed to prohibit the issue by any such corporation of its capital stock in exchange for and in accordance with the terms of such convertible stock issued in accordance with the provisions of this paragraph.

“Nothing in this section contained shall be construed to prohibit the mortgage or pledge by any railroad corporation subject to the provisions of this Act as amended of any bond or other evidence of indebtedness issued by such railroad corporation as security for or as part security for any note, bond, or other evidence of indebtedness issued by or loan made to such railroad corporation which shall not be issued or made in violation of the provisions of this Act: *Provided*, That the terms of said loan and of such notes, bonds, or other evidences of indebtedness, if any, shall provide that none of said pledged bonds or other evidences of indebtedness shall, upon nonpayment of the notes, bonds, or other evidences of indebtedness which they are pledged to secure, or upon nonperformance of any of the conditions thereof, be sold or become the property of the holders of the notes, bonds, or other evidences of indebtedness so secured, either directly or through a trustee for their benefit, except at or through public sale, notice whereof shall be published at least once a week for not less than three successive weeks prior thereto in at least one daily newspaper of general circulation published in the place where such sale shall take place: *And provided further*, That if such notes, bonds, or other evidences of indebtedness, if any, shall provide that the owners thereof shall have the right to convert the same into the bonds or other evidences of indebtedness so mortgaged or pledged, the Interstate Commerce Commission, previously to the making of such loan, shall have ascertained and

stated, in a certificate issued by the commission to such corporation, or to any person or persons intending to organize such corporation and recorded with the commission or otherwise, as authorized by this Act, the reasonable market or selling value of such bonds or other evidences of indebtedness so mortgaged or pledged and the rate which said reasonable market or selling value bears to the reasonable market or selling value of such secured notes, bonds, or other evidences of indebtedness, and that such secured notes, bonds, or other evidences of indebtedness shall not provide that the owners thereof shall have the right, upon such conversion, to receive in exchange therefor bonds or other evidences of indebtedness so mortgaged or pledged to an amount greater than would be receivable at the rate so found and stated in such certificate of the commission.

“Nothing in this Act contained shall be taken to prohibit the issue of any bond or other evidence of indebtedness pursuant to the terms of any instrument heretofore executed, provided the same shall not be sold except in conformity with the provisions of this section.

“Nothing in this Act contained shall in any way affect or impair the validity of any mortgage or pledge of any capital stock, certificate of stock, bond, or other evidence of indebtedness now mortgaged or pledged as security for or as part security for any loan heretofore made to any such corporation, or prohibit the sale, upon foreclosure or otherwise, of any such mortgaged or pledged stock, certificate of stock, bonds, or other evidences of indebtedness upon the terms and conditions provided in the instrument, if any, whereunder such securities may have been pledged or in the contract of loan; and nothing in this section contained shall be construed in any way to prohibit or affect the issue of any capital stock or the

delivery of any certificate of stock, or the issue of any bond or other evidence of indebtedness in exchange for or to provide for the retirement of any capital stock, certificate of stock, bond, or other evidence of indebtedness now outstanding or provided to be issued, or the pledge of the exchanged or retired stock or securities on such terms and conditions as may be provided in the instruments whereunder any of the stocks, bonds, or other evidences of indebtedness referred to in this paragraph are respectively issued or authorized to be issued.”

SEC. 14. That a new section be added to said Act to regulate commerce, to be numbered as section twenty-six, as follows :

“SEC. 26. That in case at any time it shall be proposed by or pursuant to any plan of reorganization of any railroad corporation or corporations incorporated prior to January first, nineteen hundred and ten, the properties whereof shall be in the hands of a receiver or of receivers, or shall be subject to be sold in any suit or suits or other judicial proceedings for foreclosure of any mortgage or deed of trust heretofore executed, or for the dissolution or winding up of such corporation, or to procure the satisfaction of its debts or the application of its property thereto, pending at the time of such proposal, that any corporation utilized or to be utilized for the purposes of such reorganization, which at such time shall be, or, when organized and operating, will be, subject to the provisions of this Act as amended (every corporation so utilized or to be utilized being hereinafter referred to by the term “New corporation”), shall issue stock and bonds and other evidences of indebtedness, or any thereof, for any purpose connected with or relating to any part of its business governed by this Act, as amended, application for any certificate of the Interstate Commerce Commission that may be requisite under the provisions of

this section may be made by any person, committee, or representatives of any committee, or by managers having in charge the formulating or carrying out of any such plan of reorganization, and such certificate may be issued to such person, committee, representatives, or managers for the use of the new corporation; and the issue pursuant to such plan of reorganization by any new corporation of stock, whether of a single class or of two or more classes, as may be authorized by law, to an amount in the aggregate not exceeding the fair estimated value of the property of the corporation or corporations so reorganized or to be reorganized, which shall be ascertained by the Interstate Commerce Commission, and which aggregate amount shall be stated in a certificate issued by said commission to such person, committee, representatives, or managers for the use of the new corporation, and in no case shall exceed the aggregate amount of the par value of the stocks of the corporation or corporations reorganized or to be reorganized; and the issue by any new corporation of bonds and other evidences of indebtedness, whether unsecured or secured by mortgage upon said properties or otherwise, to an aggregate amount not exceeding the amount of new money paid to the new corporation pursuant to such plan of reorganization, and the amounts of bonds and other obligations and debts, including receiver's liabilities, which at the time of such sale or sales may have constituted claims or charges, whether legal or equitable, upon or against the corporation or corporations so reorganized, or the properties thereof, and provision for the payment of which or the delivery of securities of the new corporation in exchange for which shall be made in such plan shall not be deemed to be prohibited by anything contained in this Act: *Provided*, That the aggregate amount of interest charges agreed to be paid by the new corporation or to which its property

will be subject shall not exceed the aggregate amount of the interest charges to which the corporation or corporations so reorganized or their properties shall have been subject; and nothing in this Act shall be deemed to prohibit the new corporation from assuming any bonds, debts, or other obligations of the corporation or corporations so reorganized in place of which it might, in accordance with the rules prescribed by this section, issue its own stocks, bonds, or other obligations.

“In case two or more railroad corporations subject to the provisions of this Act, as amended, shall be consolidated or merged pursuant to the laws of a State or States applicable thereto and such consolidation or merger shall consist in uniting the organizations, properties, businesses, and stocks of said corporations; and if the Interstate Commerce Commission shall have ascertained and stated in a certificate issued by it to the corporations in respect to which such consolidation or merger is to take place or shall have taken place, or to one of them (or to any person, committee, or representatives of any committee, or to managers having in charge the formulating or carrying out of any plan of reorganization such as is hereinbefore mentioned under which the corporation that is to issue new securities to be distributed under such plan will be a corporation resulting from any consolidation or consolidations, merger or mergers), that the stock to be issued by such consolidated corporation and the bonds and other obligations, if any, to be assumed and issued thereby does not exceed the fair estimated value of the properties of such consolidated corporation, nothing in this Act contained shall be deemed to prohibit the issue of such stock and bonds and other obligations, or any of them, or the assumption of all or any of the bonds or other obligations of the corporations so consolidated or merged.

“Nothing in this Act contained shall prevent a railroad corporation subject to the provisions of this Act, as amended, from acquiring the stock and bonds of another railroad corporation, subject to said Act, which is not directly and substantially competitive with that of such first-mentioned corporation, by the issue of its own stock and bonds, provided the aggregate amount of the par values of the stock and bonds so issued shall not exceed the fair value of the property of the corporation whose stock and bonds are so acquired, which value shall be ascertained by the Interstate Commerce Commission.

“But nothing herein contained shall be construed to authorize or to validate or permit the consolidation or merger in any manner of two or more corporations in violation of any Act of Congress, including the Act approved July second, eighteen hundred and ninety, entitled, ‘An Act to protect trade and commerce against unlawful restraints and monopolies.’ ”

SEC. 15. That a new section be added to said Act to regulate commerce, to be numbered as section twenty-seven, as follows:

“SEC. 27. That upon application for a certificate of the Interstate Commerce Commission, pursuant to the provisions of this Act, of which notice shall be served on the United States in like manner as is provided with respect to notices of hearings upon petition in accordance with the provisions of this Act, the commission shall hear and determine the matters as to which its certificate is desired, and may make proper rules and regulations concerning the manner of such application and the conduct of the hearing.

“Any director, officer, or stockholder of such corporation who knowingly and willfully assents to or concurs in any issue of securities forbidden by the provisions of this Act shall be punished by a fine of not more than ten thou-

sand dollars, or imprisonment not longer than three years, or both.

“Nothing in this Act contained shall in any way affect or impair the validity of any such stock, certificates of stock, bonds, or other evidences of indebtedness in the hands of innocent holders for value.”

SEC. 16. That nothing in this Act contained shall undo or impair any proceedings heretofore taken by or before the Interstate Commerce Commission or any of the acts of said commission; and in any cases, proceedings, or matters now pending before it, the commission may exercise any of the powers hereby conferred upon it, as would be proper in cases, proceedings, or matters hereafter initiated; and nothing in this Act contained shall operate to release or affect any obligation, liability, penalty, or forfeiture heretofore existing against or incurred by any person, corporation, or association.

SEC. 17. That this Act shall take effect and be in force from and after the expiration of sixty days after its passage.

Amend the title so as to read: “A bill to create a commerce court, and to amend the Act entitled, An Act to regulate commerce,’ approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes.”

PRINT OF H. R. 17536. TO SHOW CHANGES IN THE TEXT OF THE ORIGINAL BILL BY THE SUBSTITUTE AMENDMENT RECOMMENDED BY THE COMMITTEE.

[Original text in Roman.—Parts stricken out show language omitted.—Parts in *italics* show language inserted.]

A BILL

To create an interstate-commerce court and to amend the Act entitled “An Act to regulate commerce,” approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a court of the United States is hereby created which shall be known as the ~~United States court of commerce~~ *court* (~~hereinafter referred to as the court of commerce~~) and shall have *the jurisdiction now possessed by circuit courts of the United States and the judges thereof* over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend *in whole or in part* any order ~~or requirement~~ of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act to further regulate commerce with foreign nations and among the States, approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of

the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States. *But Nothing hereinbefore contained in this Act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, which is hereby transferred to and vested in the commerce court.*

The jurisdiction of the ~~court-of~~ commerce court over cases of the foregoing classes shall be exclusive; but this Act shall not effect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

The ~~court-of~~ commerce court shall be a court of record, and shall have a seal of such form and style as the court may prescribe. The said court shall be composed of five judges, to be from time to time designated and assigned thereto by the Chief Justice of the United States from among the circuit judges of the United States, for the period of five years, except that *in the first instance designations after the passage of this Act shall be made for one, two, three, four, and five years, respectively, in order that the period of designation of one of the said judges shall expire in each year thereafter.* *the court shall be composed of the five additional circuit judges to be appointed as hereinafter provided, who shall be designated by the President to serve for one, two, three, four, and five years, respectively, in order that the period of designation of one of the said judges shall expire in each year thereafter.* In case of the death, resignation, or termination of assignment of any judge so designated, the Chief Justice shall designate a circuit judge to fill the vacancy so caused and to serve during the unexpired period for which the original

designation was made. After the year nineteen hundred and fourteen no circuit judge shall be redesignated to serve on the commerce court until the expiration of at least one year after the expiration of the period of his last previous designation. The judge first designated for the five-year period shall be the presiding judge of said court, and thereafter the judge senior in commission shall be the presiding judge.

Each of the judges during the period of his service in the commerce court shall, on account of the regular sessions of the court being held in the city of Washington, receive in addition to his salary as circuit judge an expense allowance at the rate of ~~three~~ *two* thousand dollars per annum. The President shall, by and with the advice and consent of the Senate, appoint five additional circuit judges, no two of whom shall be from the same judicial circuit, who shall hold office during good behavior and who shall be from time to time designated and assigned by the Chief Justice of the United States for service in the circuit court for any district, or the circuit court of appeals for any circuit, or in the ~~court of commerce court.~~ ~~The additional judges so to be appointed shall receive the like pay and emolument as now are or shall be provided by law for circuit judges.~~

The associate judges shall have precedence and shall succeed to the place and powers of the presiding judge whenever he may be absent or incapable of acting in the order of the date of their commissions. Four of said judges shall constitute a quorum, and at least a majority of the court shall concur in all decisions.

The court shall also have a clerk and a marshal, with the same duties and powers, so far as they may be appropriate and are not altered by rule of the court, as are now possessed by the clerk and marshal, respectively, of the Su-

preme Court of the United States. The offices of the clerk and marshal of the court shall be in the city of Washington, in the District of Columbia. The judges of the court shall appoint the clerk and marshal, and may also appoint, if they find it necessary, a deputy clerk and deputy marshal; and such clerk, marshal, deputy clerk, and deputy marshal shall hold office during the pleasure of the court. The salary of the clerk shall be four thousand dollars per annum; the salary of the marshal three thousand dollars per annum; the salary of the deputy clerk two thousand five hundred dollars per annum; and the salary of the deputy marshal two thousand five hundred dollars per annum. The said clerk and marshal may, with the approval of the court, employ all requisite assistance. The costs and fees in said court shall be established by the court in a table thereof, approved by the Supreme Court of the United States, within four months after the organization of the court; but such costs and fees shall in no case exceed those charged in the Supreme Court of the United States, and shall be accounted for and paid ~~to~~ *into* the Treasury ~~Department~~ of the United States.

The ~~court-of~~ *commerce court* shall be always open for the transaction of business. Its regular sessions shall be held in the city of Washington, in the District of Columbia; but the powers of the court or of any judge thereof, or of the clerk, marshal, deputy clerk, or deputy marshal may be exercised anywhere in the United States; and for expedition of the work of the court and the avoidance of undue expense or inconvenience to suitors the court shall hold sessions in different parts of the United States as may be found desirable. The actual and necessary expenses of the judges, clerk, marshal, deputy clerk, and deputy marshal of the court incurred for travel and attendance else-

where than in the city of Washington shall be paid upon the written and itemized certificate of such judge, clerk, marshal, deputy clerk, or deputy marshal by the marshal of the court, and shall be allowed to him in the statement of his accounts with the United States.

The United States marshals of the several districts outside of the city of Washington in which the ~~court-of~~ commerce *court* may hold its sessions shall provide, under the direction and with the approval of the Attorney-General of the United States, such rooms in the public buildings of the United States as may be necessary for the court's use; but in case proper rooms can not be provided in such public buildings, said marshals, with the approval of the Attorney-General of the United States, may then lease from time to time other necessary rooms for the court.

If, at any time, the business of the ~~court-of~~ commerce *court* does not require the *continuous* services of all the judges, the Chief Justice of the United States may, by writing, signed by him and filed in the Department of State, terminate the assignment of any of the judges or temporarily assign him for service in any circuit court or circuit court of appeals. In case of illness or other disability of any judge assigned to the ~~court-of~~ commerce *court*, the Chief Justice of the United States may assign any other circuit judge of the United States to act in his place, and may terminate such assignment when the exigence therefor shall cease; and any circuit judge so assigned to act in place of such judge shall, during his assignment, exercise all the powers and perform all the functions of such judge.

In all cases within its jurisdiction the ~~court-of~~ commerce *court*, and each of the judges assigned thereto, shall, respectively, have and may exercise any and all of the powers of a circuit court of the United States and of the

judges of said court, respectively, so far as the same may be appropriate to the effective exercise of the jurisdiction hereby conferred. The ~~court of~~ commerce *court* may issue all writs and process appropriate to the full exercise of its ~~jurisdictional~~ *jurisdiction and* powers and may prescribe the form thereof. It may also, from time to time, establish such rules ~~or~~ *and* regulations concerning pleading, practice, or procedure in cases or matters within its jurisdiction as to the court shall seem wise and proper. Its orders, writs, and process may run, be served, and be returnable anywhere in the United States; and the marshal and deputy marshal of said court and also the United States marshals and deputy marshals in the several districts of the United States shall have like powers and be under like duties to act for and in behalf of said court as pertain to United States marshals and deputy marshals generally when acting under like conditions concerning suits or matters in the circuits of the United States.

The jurisdiction of the ~~court of~~ commerce *court* shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the ~~court of~~ commerce *court* or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice. *In case a defendant to such petition can not be found within the district of his last-known residence or place of business, and the marshal shall so return, service of the petition may be made in the manner provided*

in section eight of the Act entitled "An Act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from state courts, and for other purposes," approved March third, eighteen hundred and seventy-five. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing and not by demurrer. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court; and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this Act, or by rule of the court, the practice and procedure in the court of commerce shall conform as nearly as may be to that in like cases in a circuit court of the United States.

~~The judges of the court of commerce shall be designated by the Chief Justice of the United States within ninety days after the passage of this Act, and the court shall be open for the transaction of business at a date to be fixed by order of the said court, which shall be not later than thirty days after the judges thereof shall have been so designated.~~

SEC. 2. That a final judgment or decree of the court of commerce may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court

is *be* taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a circuit court of the United States to the Supreme Court, and *the commerce court may direct the original record to be transmitted on appeal instead of a transcript thereof.* The Supreme Court may affirm, reverse, or modify the final judgment or decree of the ~~court-of~~ *commerce court* as the case may require.

Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the ~~court-of~~ *commerce court* appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require.

Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court.

SEC. 3. That suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the ~~court-of~~ *commerce court* against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the ~~court-of~~ *commerce court*, in its discretion, may restrain or suspend, *in whole or in part*, the operation of the commission's order pending the final hearing and determination of the suit. No order or injunction so restraining or suspending an order of the Interstate Commerce Commission shall be made by the ~~court-of~~ *commerce court* otherwise than upon notice and after hearing, except that in cases where irreparable damage would otherwise ensue to the petitioner, *said court*, or a judge *thereof* ~~of-said-court~~ may allow a

temporary stay or suspension *in whole or in part* of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of his order, pending application to the court for its order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judge making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension *in whole or in part* until its decision upon the application.

SEC. 4. That from and after the passage of this Act all cases and proceedings in the ~~court of~~ commerce *court* which, but for this Act, would be brought by or against the Interstate Commerce Commission shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the ~~court of~~ commerce *court* whenever, though it has not been made a party, public interests are involved.

SEC. 5. ~~That the President shall appoint, by and with the advice and consent of the Senate, an Assistant Attorney-General, who shall exercise the functions of his office under the supervision and control of~~ *That the Attorney-General of the United States, and shall receive a salary of seven thousand dollars per annum; and the Attorney-General shall appoint three attorneys, each of whom shall receive a salary of four thousand dollars per annum; and such Assistant Attorney-General and attorneys shall have charge, under the Attorney-General's supervision and control, of the interests of the Government in all cases and proceedings in the court of commerce court and in the Supreme Court of the United States upon appeal from the court of commerce court; The Interstate Com-*

~~merce Commission and its attorneys shall take no part in the conduct of any such litigation. The Attorney-General, however,~~ and if in his opinion the public interest requires it, may retain and employ in the name of the United States such special attorneys and counselors at law as he may think necessary to assist ~~said Assistant Attorney-General~~ in the discharge of any of the duties incumbent upon him and his ~~said~~ subordinate attorneys; and the Attorney-General shall stipulate with such special attorneys and counsel the amount of their compensation and shall have supervision of their action: *Provided, That parties in interest to the proceeding before the commission, in which an order or requirement is made, may appear and be represented by their counsel, upon such terms as the court may prescribe, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; but such appearance and representation shall not interfere with the control of the case by the Attorney-General, and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matter of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits.*

SEC. 6. That ~~before until the date fixed for~~ the opening of the ~~court of~~ commerce court as in section one hereof provided, all cases and proceedings of which from that time the ~~court of~~ commerce court is hereby given exclusive jurisdiction may be brought in the same courts and conducted in like manner and with like effect as is now provided by law; and if any such case or proceeding shall have gone to final judgment or decree before the ~~date so fixed~~ opening of said court, appeal may be taken from such final judgment or decree in like manner and with

like effect as is now provided by law. Any such case or proceeding within the jurisdiction of the ~~court-of~~ commerce court which may have been begun in any other court as hereby allowed before the said date shall be forthwith transferred to the ~~court-of~~ commerce court, if it has not yet proceeded to final judgment or decree in such other court *unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in the circuit court to final judgment or decree and further proceeding thereafter, and appeal may be taken direct to the Supreme Court, and if remanded such cause may be sent back to the circuit court or to the ~~Court-of~~ commerce court for further proceeding as the Supreme Court shall direct*; and all previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the ~~court-of~~ commerce court and to the same right of subsequent action in the case or proceeding as if the transferred case or proceeding had been originally begun in the ~~court-of~~ commerce court. The clerk of the court from which any case or proceeding is so transferred to the ~~court-of~~ commerce court shall transmit to and file in the ~~court-of~~ commerce court the originals of all papers filed in such case or proceeding and a certified transcript of all record entries in the case or proceeding up to the time of transfer.

SEC. 6a. That section one of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby now amended so as to read as follows:

"SECTION 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by

pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or from one place in a Territory or District to another place in the same Territory or District, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.

“ The term ‘common carrier’ as used in this Act shall include express companies and sleeping-car companies. The term ‘railroad’ as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term ‘transportation’ shall include cars and other

vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes, and to exchange, interchange, and return cars used therein, and to make reasonable rules and regulations with respect thereto and for operation of such through routes, and providing for reasonable compensation to those entitled thereto, for the use of, injury to, destruction or loss of any of such cars on the line of any carrier operating a part of such through or joint routes.

“All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

“And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and deliver-

ing property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this Act which may be necessary or convenient to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful.

“No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men’s Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers’ and Sailors’ Homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary care takers of live stock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attend-

ing any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *Provided further*, That the term 'employees' as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

“From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to

transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

“ Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad may make complaint to the commission, as provided in section thirteen of this Act, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in

accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the commission, other than orders for the payment of money.’’

SEC. 6b. That section four of said Act to regulate commerce be amended so as to read as follows:

“SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the local rates; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: Provided, however, That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: Provided further, That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.’’

SEC. 7. That section five of ~~the said~~ Act to regulate commerce, ~~approved February fourth, eighteen hundred and eighty-seven,~~ as *heretofore* amended, is hereby *now* amended ~~by adding at the end thereof a new paragraph,~~ so as to read as follows :

“Agreements between common carriers subject to this Act specifying the classifications of freight and the rates, fares, and charges for transportation of passengers and freight which they agree to establish shall not be unlawful *under this Act as amended or under the Act approved July second, eighteen hundred and ninety, entitled ‘An Act to protect trade and commerce against unlawful restraints and monopolies,’ or otherwise* if a copy of such agreement *in such form and in such detail as the commission may prescribe* is filed with the Interstate Commerce Commission within twenty days after it is made, and before or when any schedule of any rate, fare, or charge, or any classification made pursuant to the agreement is filed with the commission ; but all provisions of ~~the this Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven,~~ as amended, ~~and all provisions of this Act~~ and any future amendments thereof shall apply to such agreed rates, fares, and charges, and such agreed classifications, and the Interstate Commerce Commission shall have like control over and power of action concerning any agreed rate, fare, charge, or classification, including suspension of the rate or classification before it becomes effective, and pending investigation of its propriety, as if the rate, fare, charge, or classification had been made without agreement, and any party to such agreement may cancel it as to all or any of the agreed rates, fares, charges, or classifications by thirty days’ notice in writing to the other parties and to the Interstate Commerce Commission, and such agreement of carriers, though filed with the com-

mission, shall not be deemed a tariff or schedule of rates, fares, or charges collectible from the public, or operate itself to alter any such tariff or schedule whensoever filed and published. *But it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of traffic of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of traffic as aforesaid, each day of its continuance shall be deemed a separate offense.*

SEC. 8. That section six of ~~the~~ said Act to regulate commerce, ~~approved February fourth, eighteen hundred and eighty-seven,~~ as heretofore amended, is hereby now amended by adding ~~a~~ three new ~~paragraph~~ paragraphs at the end thereof, as follows :

“ In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.”

“ If any ~~railroad corporation, being a~~ common carrier subject to this Act, after written request made upon the ~~freight~~ agent of such carrier hereinafter in this section referred to by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or

shall misstate in writing ~~its~~ *the* applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.”

“It shall be the duty of every such ~~railroad-corporation~~ *common carrier* to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request ~~to~~ *in substantially the following form*: ‘The Station Agent of the ——— Company at ——— Station,’ *together with the name of the proper post-office*, inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any post-office.”

SEC. 8a. That section ten of said Act to regulate commerce, as heretofore amended, be now amended so as to read as follows:

“*SEC. 10. That any common carrier subject to the provisions of this Act, or, whenever such common carrier*

is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

“ Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property

at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

“ Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement, or entry, obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or

without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: Provided, That the penalty of imprisonment shall not apply to artificial persons.

“If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent

jurisdiction for all damages caused by or resulting therefrom.’’

SEC. 8b. That section thirteen of said Act to regulate commerce be amended so as to read as follows:

“SEC. 13. That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier, subject to the provisions of this Act, in contravention of the provisions thereof, or relating in any way to the rates demanded, charged, or collected by any common carrier, subject to the provisions of this Act, for the transportation of persons or property, as defined in section one of this Act, or relating to or affecting any classification of property with reference to which such rates exist, or relating to or affecting any regulations or practices whatsoever of such carrier, or of the failure of such carrier to establish, observe, and enforce just and reasonable classifications of property and just and reasonable regulations and practices, as required by section one of this Act may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the

commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

“Said commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act, by any common carrier, subject to its provisions or the enforcement of any authority granted by this Act to the said commission. And the said commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.”

SEC. 9. That section fifteen of ~~the said Act to regulate commerce, approved February fourth, eighteen hundred and eighty seven,~~ as heretofore amended, is hereby now amended so as to read as follows :

“SEC. 15. That whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, ~~or upon complaint of any common carrier,~~ or after full hearing under an order for investigation and hearing

made by the commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act for the transportation of persons or property as defined in the first section of this Act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers ~~affecting such rates~~ are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice ~~in respect to such transportation~~ is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum ~~amount~~ rate or charge so prescribed, and shall adopt the classification and shall conform to *and establish, observe, and enforce* the regulation or practice so prescribed. *And where the action of the commission is with respect to terminal, switching, icing, storage, elevation, or other special charges, which are only made when the through rate for the transportation is also imposed, and such special charges become part of the aggregate of charges for the entire service, the commission may consider such special charges separately or in connection with*

the total charges or rates and prescribe the maximum rates and charges which in the aggregate or separately are just and reasonable. All orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or modified or set aside by the commission, or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

“Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice ~~affecting any rate, fare, or charge~~, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission *upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension* may suspend the operation of such schedule

and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than ~~sixty~~ *one hundred and twenty* days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective.

“The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. *But this Act shall not be construed to affect traffic originating and ending on the line of any water carrier and transported wholly by water and shall not be held to affect the limitation of liability of water carriers as now provided by law.* The commission shall not, however, establish any through route, classification, or rate between street, ~~suburban, or interurban~~ electric passenger railways *not engaged in the general business of transporting freight in addition to their passenger business* and railroads of a different character.

~~“And in establishing such through route, the commission shall not require any company, without its consent,~~

~~to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini and would form part of such through route, unless the route by way of such last-described line of railroad is unreasonably long as compared with such proposed through route.~~

“In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment *there are* two or more through routes ~~shall be then duly established and for which a through rate shall have been fixed as in this Act provided, to which through route and through rate such carrier is a party,~~ the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to ~~said bill of lading~~ *such routing instructions*.

“If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used

therein, the charge and allowance therefor shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

“The foregoing enumeration of powers shall not exclude any power which the commission would otherwise have in the making of an order under the provisions of this Act.”

SEC. 10. That section sixteen of said Act to regulate commerce, ~~approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby now amended by striking out all that part of the section which follows the sentence “It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect,” and by substituting for the part so stricken out the following: so as to read as follows:~~

“SEC. 16. That if, after hearing on a complaint made as provided in section thirteen of this Act, the commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

“If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located

the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims damages, and the order of the commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the commission shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after: *Provided*, That claims accrued prior to the passage of this Act may be presented within one year.

“In such suits all parties in whose favor the commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of

any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

“Every order of the commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

“The commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

“It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

“Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

“The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

“It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

“The commission may employ such attorneys as it finds necessary for proper legal aid and service of the commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the commission’s own instance or upon complaint; and the expenses of such employment shall be paid out of the appropriation for the commission.

“If any carrier fails or neglects to obey any order of the commission other than for the payment of money, while the same is in effect, any party injured thereby, or the United States, by its Attorney-General, may apply to the ~~court of~~ commerce *court* for enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

“The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the commission as required under the provisions of this Act *and certificates issued by the commission in accordance with any provision of law* shall be preserved as public records in the custody of the secretary of the commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the commission and in

all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, ~~or~~ reports, *or certificates* made public records as aforesaid, certified by the secretary, under the commission's seal, shall be received in evidence with like effect as the originals."

SEC. 11. That section twenty of ~~the said Act to regulate commerce, approved February fourth, eighteen hundred and eighty seven,~~ as heretofore amended, is *hereby* amended by striking out the following paragraph:

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the commission it shall be subject to the forfeitures last above provided; "

And by ~~adding~~ *inserting* in lieu of the paragraph so stricken out the following:

“Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first *day* of December in each year if the commission by order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed *or which it is required to enforce*; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided.”

SEC. 12. That no railroad corporation which is a common carrier subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, shall hereafter acquire, directly or indirectly, any interest of whatsoever kind in the capital stock of any railroad or water carrier corporation, or purchase or lease the any railroad, of any railroad corporation which competes with such first-named corporation respecting business to which said Act to regulate commerce, as amended, applies; and any corporation which acquires any interest in capital stock, or which purchases or leases a railroad contrary to this section, or which holds or retains any interest in capital stock or in a railroad hereafter acquired in violation of this section, shall be fined five thousand dollars for each day or part of day during which it holds or retains such interest unlawfully acquired: *Provided, however,* That nothing in this section contained shall operate to prevent any such corporation which at the date of the passage of this Act owns not less than one-half of the entire issued and outstanding capital stock of any other railroad corporation from acquiring any of the remainder of such stock, nor to prevent any such corporation which is now operating under lease, made for not less than twenty years, a railroad of any other such corporation from renewing such lease or acquiring the reversionary ownership of the lessor railroad, either directly or through purchases of the stock of the lessor company: *And provided further,* That the words "railroad corporation," as used in this section, shall not apply to or include street, suburban, or interurban electric passenger railway corporations or water line which is directly and substantially competitive with that of such first-named corporation, nor shall any water carrier corporation engaged in

interstate commerce hereafter acquire, directly or indirectly, any interest of whatsoever kind in the capital stock of any railroad corporation, or purchase or lease any railroad, that is subject to the Act to regulate commerce and which is directly and substantially competitive with such water line; nor shall any such railroad or water carrier corporation have after the first day of July, nineteen hundred and eleven, as an officer or a director any person who may also be at the same time an officer or director of any such competing corporation; and any corporation which acquires any interest in capital stock, or which purchases or leases a railroad or water line contrary to this section, or which holds or retains any interest in capital stock or in a railroad or water line hereafter acquired in violation of this section, or which shall have and retain as an officer or director after the first day of July, nineteen hundred and eleven, any person who is also an officer or director of any such competing corporation, shall be fined five thousand dollars for each day or part of day during which it holds or retains such interest unlawfully acquired, or retains such prohibited officer or director.

~~But nothing herein contained shall be construed to affect the rights or liabilities of either party to any suit or action pending at the passage of this Act, nor to authorize or validate the acquisition by a railroad corporation being a common carrier subject to said Act to regulate commerce as amended of any interest in the capital stock or the purchase or lease of the railroad of any other railroad company in violation of any other Act of Congress, including the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."~~

Any attempted acquisition of an interest in capital stock, or the purchase or lease of a railroad or water line,

contrary to this section shall be void and may be enjoined by any court of competent jurisdiction at the suit of the United States; and the holding or retention of any interest in capital stock or the acquisition of a railroad *or water line* contrary to this section may likewise be enjoined in any court of competent jurisdiction at the suit of the United States; but any railroad *or water carrier* corporation, being a common carrier as aforesaid, which proposes to acquire any interest in the capital stock or to lease or purchase a railroad *or water line* of any other corporation may apply to the ~~court-of~~ commerce *court* by its petition for that purpose, filed in advance of actual taking of such interest in capital stock or the acquisition of such railroad *or water line*, but after an agreement or contract for its acquisition has been made, with a stipulation therein that such agreement or contract shall take effect in case it is found by the ~~court-of~~ commerce *court* not to violate this section, for an adjudication as between such corporation and the United States, whether or not the proposed acquisition of an interest in the capital stock or the proposed purchase or lease of the railroad *or water line* of another corporation violates this section, and the adjudication of the ~~court-of~~ commerce *court* upon such application shall have the ordinary effect of judgments as an estoppel between the parties.

The ~~court-of~~ commerce *court* is hereby given jurisdiction to hear and determine such applications and to take all proper proceedings thereon; and the filing of said petition shall be taken as a consent on the part of the corporation making the application that the ~~court-of~~ commerce *court* issue at once an interlocutory injunction against the proposed acquisition pending final determination by the court concerning its legality hereunder. If the ~~court-of~~ commerce *court* finally adjudges the pro-

posed transaction to be unlawful, it shall by its decree permanently enjoin the proposed acquisition. In case the United States shall have sued to restrain the proposed acquisition in a court other than the ~~court of~~ commerce court before the corporation proposing to make such acquisition files its petition as aforesaid in the ~~court of~~ commerce court, such suit of the United States shall be stayed pending the decision of the ~~court of~~ commerce court if it has not yet proceeded to final decree, and said suit of the United States shall be dismissed if the ~~court of~~ commerce court finally adjudges that the proposed acquisition does not violate this section.—~~In making the determination herein provided for the court shall take into consideration the effect of such proposed acquisition upon the due observance and effective enforcement of all the laws of the United States, and the relative importance of any benefit to the public interest and of any effect upon competition resulting from such acquisition:~~ *Provided, That nothing herein contained shall be construed to affect in any way any suit or action pending at the passage of this Act, nor the rights or liabilities of any party thereto, nor to authorize or validate the acquisition by a railroad corporation, being a common carrier subject to said Act to regulate commerce, as amended, of any interest in the capital stock, or the purchase or lease of the railroad or water line of any other railroad or water carrier company, in violation of any Act of Congress, including the Act approved July second, eighteen hundred and ninety, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies:” And provided further, That the right to so apply to said commerce court shall not extend to any railroad corporation now holding stock in any other railroad corporation in violation of any Act of Congress, including the said Act approved July second,*

eighteen hundred and ninety, which holding is the subject or in any way involved in any suit or action pending at the date of the passage of this Act.

~~SEC. 13. That except as hereinafter provided, no railroad corporation which is a common carrier subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty seven, as amended, shall hereafter issue for any purpose connected with or relating to any part of its business governed by said Act to regulate commerce, as amended, any capital stock or certificate of stock without previous or simultaneous payment to it of not less than the par value of such stock, or any bond or other evidence of indebtedness except notes maturing not more than one year from the date of their issue, without previous or simultaneous payment to such corporation of not less than the par value of such bond or other evidence of indebtedness, or if sold at less than par, then of not less than its reasonable market value as ascertained by the Interstate Commerce Commission and stated in a sealed certificate issued by the commission to the corporation and recorded with the commission; and no property, services, or other thing than money shall be taken in payment to the corporation of the par or other required price of such stock, certificate of stock, evidence of indebtedness, or other evidence of indebtedness, except at the fair value of such property, services, or other thing than money, as ascertained by the Interstate Commerce Commission and stated in a sealed certificate issued by it to such corporation and recorded with the commission before the issue of said stock, certificate of stock, or other evidence of indebtedness.~~

~~In case of the issue of stock and bonds or either of them by any railroad corporation subject to this Act, under any consolidation or merger of two or more railroad corpora-~~

~~tions under the laws of one or more State or States applicable thereto, or pursuant to any plan of reorganization of such corporation upon judicial sale of its properties or in view of insolvency or otherwise, the issue of such new stock and bonds or other obligations or both shall not be deemed prohibited by this section if the Interstate Commerce Commission shall have ascertained and stated in a sealed certificate issued by it to such corporation that the stock and bonds or other evidence of indebtedness or both proposed to be issued do not unreasonably exceed the fair estimated value of the properties acquired in such merger or consolidation or represented in such reorganization.~~

~~No issue of stock or bonds shall be made for the purpose of paying or taking up notes maturing not more than one year from the day of their issue and hereafter issued by such corporation for a purpose connected with or relating to any of its business governed by said Act to regulate commerce as amended, in an amount greater than will suffice, upon issue of such stock or bonds under the rules hereinbefore prescribed concerning issues of stock or bonds, to yield a sum equal to the amount of money actually received by such corporation, for such notes, or to yield a sum equal to the amount of notes which the Interstate Commerce Commission before the issue of such new stock or bonds states in a sealed certificate issued by the commission to the corporation and recorded with the commission would have availed to procure for such a corporation upon sale of the notes at par or at their reasonable market value, if less than par at the time of their issue, a sum equal to the consideration actually received for the notes by such corporation.~~

~~Upon application by the corporation for a certificate of the Interstate Commerce Commission pursuant to this section, of which notice shall be served on the United~~

~~States in like manner as provided with respect to petition by section one hereof, the commission shall hear and determine the matters as to which its certificate is desired; and may make proper rules and regulations concerning the manner of such application and the conduct of the hearing.~~

~~Issues of stock, certificates of stock, bonds, or other evidences of indebtedness contrary to this section may be enjoined by any court of competent jurisdiction at the suit of the United States or of any director, officer, or stockholder of the corporation proposing to make the issue; and any director, officer, or stockholder of such corporation who assents to or concurs in any issue of securities forbidden by this section shall be punished by fine of not more than ten thousand dollars or imprisonment not longer than three years, or by both.~~

~~Nothing in this section contained shall in any way affect or impair the validity of any such stocks, certificates of stock, bonds, or other evidences of indebtedness in the hands of innocent holders for value.~~

SEC. 13. That a new section be added to said Act to regulate commerce, to be numbered as section 25, as follows:

“SEC. 25. That no railroad corporation which is a common carrier subject to the provisions of this Act as amended shall hereafter issue for any purpose connected with or relating to any part of its business governed by the provisions of this Act as amended any stock, bonds, notes, or other evidences of indebtedness to an amount exceeding that which may from time to time be reasonably necessary for the purpose for which such issue of stock, bonds, notes, or other evidences of indebtedness may be authorized.

“The amount of said securities to be thus issued, excepting notes maturing not more than two years from the date

of their issue, shall be determined by the Interstate Commerce Commission, and any sale of said securities shall be at a price not less than their reasonable value, which, excepting as to notes maturing not more than two years from the date of their issue, shall be ascertained and fixed by the commission. Said commission shall render a decision upon an application for such issue within thirty days after the final hearing thereon. Such decision shall be in writing, shall assign the reasons therefor, shall, if authorizing such issue, specify the respective amounts of stock, bonds, or notes or other evidences of indebtedness as aforesaid which are authorized to be issued for the respective purposes to which the proceeds thereof are to be applied. A certificate of the decision of said commission shall, before the stock, bonds, or notes or other evidences of indebtedness as aforesaid are issued, be delivered to the corporation. Such corporation shall not apply the proceeds of such stock, bonds, or notes or other evidences of indebtedness as aforesaid to any purpose not specified in such certificate, and no property, services, or other thing than money shall be taken in payment to the corporation of the required price of such stock, certificate of stock, bond, or other evidence of indebtedness, except at the fair value of such property, services, or other thing than money, which shall be ascertained by the Interstate Commerce Commission and stated in a certificate issued by it to such corporation, or to any person or persons intending to form such corporation, and recorded with the commission before the issue of said stock, certificate of stock, or other evidence of indebtedness: Provided, That nothing herein contained shall be construed to prevent a corporation subject to this Act from issuing its stock, bonds, or other obligations to refund bonds or other obligations heretofore or hereafter issued and outstanding

to an amount reasonably necessary for that purpose determined as hereinbefore provided.

“No railroad corporation subject to the provisions of this Act as amended shall hereafter, for any purpose connected with or relating to any part of its business governed by this Act, issue any capital stock convertible into other capital stock of such railroad corporation unless by the terms of the certificate representing the stock so convertible the amount, par value, of capital stock that the holder of such certificate is entitled to receive in exchange therefor shall be equal to or less than the par value of the shares of stock represented by such certificate of convertible stock; but nothing contained in this Act shall be deemed to prohibit the issue by any such corporation of its capital stock in exchange for and in accordance with the terms of such convertible stock issued in accordance with the provisions of this paragraph.

“Nothing in this section contained shall be construed to prohibit the mortgage or pledge by any railroad corporation subject to the provisions of this Act as amended of any bond or other evidence of indebtedness issued by such railroad corporation as security for or as part security for any note, bond, or other evidence of indebtedness issued by or loan made to such railroad corporation which shall not be issued or made in violation of the provisions of this Act: Provided, That the terms of said loan and of such notes, bonds, or other evidences of indebtedness, if any, shall provide that none of said pledged bonds or other evidences of indebtedness shall, upon nonpayment of the notes, bonds, or other evidences of indebtedness which they are pledged to secure, or upon nonperformance of any of the conditions thereof, be sold or become the property of the holders of the notes, bonds, or other evidences of indebtedness so secured, either directly or through a trustee for their benefit, except at or

through public sale, notice whereof shall be published at least once a week for not less than three successive weeks prior thereto in at least one daily newspaper of general circulation published in the place where such sale shall take place: And provided further, That if such notes, bonds, or other evidences of indebtedness, if any, shall provide that the owners thereof shall have the right to convert the same into the bonds or other evidences of indebtedness so mortgaged or pledged, the Interstate Commerce Commission, previously to the making of such loan, shall have ascertained and stated, in a certificate issued by the commission to such corporation, or to any person or persons intending to organize such corporation and recorded with the commission or otherwise, as authorized by this Act, the reasonable market or selling value of such bonds or other evidences of indebtedness so mortgaged or pledged and the rate which said reasonable market or selling value bears to the reasonable market or selling value of such secured notes, bonds, or other evidences of indebtedness, and that such secured notes, bonds, or other evidences of indebtedness shall not provide that the owners thereof shall have the right, upon such conversion, to receive in exchange therefor bonds or other evidences of indebtedness so mortgaged or pledged to an amount greater than would be receivable at the rate so found and stated in such certificate of the commission.

“Nothing in this Act contained shall be taken to prohibit the issue of any bond or other evidence of indebtedness pursuant to the terms of any instrument heretofore executed, provided the same shall not be sold except in conformity with the provisions of this section.

“Nothing in this Act contained shall in any way effect or impair the validity of any mortgage or pledge of any capital stock, certificate of stock, bond, or other evidence of indebtedness now mortgaged or pledged as security for

or as part security for any loan heretofore made to any such corporation, or prohibit the sale, upon foreclosure or otherwise, of any such mortgaged or pledged stock, certificate of stock, bonds, or other evidences of indebtedness upon the terms and conditions provided in the instrument, if any, whereunder such securities may have been pledged or in the contract of loan; and nothing in this section contained shall be construed in any way to prohibit or affect the issue of any capital stock or the delivery of any certificate of stock, or the issue of any bond or other evidence of indebtedness in exchange for or to provide for the retirement of any capital stock, certificate of stock, bond, or other evidence of indebtedness now outstanding or provided to be issued, or the pledge of the exchanged or retired stock or securities on such terms and conditions as may be provided in the instruments whereunder any of the stocks, bonds, or other evidences of indebtedness referred to in this paragraph are respectively issued or authorized to be issued.’’

SEC. 14. That a new section be added to said Act to regulate commerce, to be numbered as section twenty-six, as follows:

“SEC. 26. That in case at any time it shall be proposed by or pursuant to any plan of reorganization of any railroad corporation or corporations incorporated prior to January first, nineteen hundred and ten, the properties whereof shall be in the hands of a receiver or of receivers, or shall be subject to be sold in any suit or suits or other judicial proceedings for foreclosure of any mortgage or deed of trust heretofore executed, or for the dissolution or winding up of such corporation, or to procure the satisfaction of its debts or the application of its property thereto, pending at the time of such proposal, that any corporation utilized or to be utilized for the purposes of

such reorganization, which at such time shall be, or, when organized and operating, will be, subject to the provisions of this Act as amended (every corporation so utilized or to be utilized being hereinafter referred to by the term "New corporation"), shall issue stock and bonds and other evidences of indebtedness, or any thereof, for any purpose connected with or relating to any part of its business governed by this Act, as amended, application for any certificate of the Interstate Commerce Commission that may be requisite under the provisions of this section may be made by any person, committee, or representatives of any committee, or by managers having in charge the formulating or carrying out of any such plan of reorganization, and such certificate may be issued to such person, committee, representatives, or managers for the use of the new corporation; and the issue pursuant to such plan of reorganization by any new corporation of stock, whether of a single class or of two or more classes as may be authorized by law, to an amount in the aggregate not exceeding the fair estimated value of the property of the corporation or corporations so reorganized or to be reorganized, which shall be ascertained by the Interstate Commerce Commission, and which aggregate amount shall be stated in a certificate issued by said commission to such person, committee, representatives, or managers for the use of the new corporation, and in no case shall exceed the aggregate amount of the par value of the stocks of the corporation or corporations reorganized or to be reorganized; and the issue by any new corporation of bonds and other evidences of indebtedness, whether unsecured or secured by mortgage upon said properties or otherwise, to an aggregate amount not exceeding the amount of new money paid to the new corporation pursuant to such plan of reorganization, and the amounts of

bonds and other obligations and debts, including receiver's liabilities, which at the time of such sale or sales may have constituted claims or charges, whether legal or equitable, upon or against the corporation or corporations so reorganized, or the properties thereof, and provision for the payment of which or the delivery of securities of the new corporation in exchange for which shall be made in such plan shall not be deemed to be prohibited by anything contained in this Act: Provided, That the aggregate amount of interest charges agreed to be paid by the new corporation or to which its property will be subject shall not exceed the aggregate amount of the interest charges to which the corporation or corporations so reorganized or their properties shall have been subject; and nothing in this Act shall be deemed to prohibit the new corporation from assuming any bonds, debts, or other obligations of the corporation or corporations so reorganized in place of which it might, in accordance with the rules prescribed by this section, issue its own stocks, bonds, or other obligations.

“In case two or more railroad corporations subject to the provisions of this Act, as amended, shall be consolidated or merged pursuant to the laws of a State or States applicable thereto and such consolidation or merger shall consist in uniting the organizations, properties, businesses, and stocks of said corporations; and if the Interstate Commerce Commission shall have ascertained and stated in a certificate issued by it to the corporations in respect to which such consolidation or merger is to take place or shall have taken place, or to one of them (or to any person, committee, or representatives of any committee, or to managers having in charge the formulating or carrying out of any plan of reorganization such as is hereinbefore mentioned under which the corporation that is to issue new securities to be distributed under such plan will be a corporation

resulting from any consolidation or consolidations, merger or mergers), that the stock to be issued by such consolidated corporation and the bonds and other obligations, if any, to be assumed and issued thereby does not exceed the fair estimated value of the properties of such consolidated corporation, nothing in this Act contained shall be deemed to prohibit the issue of such stock and bonds and other obligations, or any of them, or the assumption of all or any of the bonds or other obligations of the corporations so consolidated or merged.

“Nothing in this Act contained shall prevent a railroad corporation subject to the provisions of this Act, as amended, from acquiring the stock and bonds of another railroad corporation, subject to said Act, which is not directly and substantially competitive with that of such first-mentioned corporation, by the issue of its own stock and bonds, provided the aggregate amount of the par values of the stock and bonds so issued shall not exceed the fair value of the property of the corporation whose stock and bonds are so acquired, which value shall be ascertained by the Interstate Commerce Commission.

“But nothing herein contained shall be construed to authorize or to validate or permit the consolidation or merger in any manner of two or more corporations in violation of any Act of Congress, including the Act approved July second, eighteen hundred and ninety, entitled ‘An Act to protect trade and commerce against unlawful restraints and monopolies.’ ”

SEC. 15. That a new section be added to said Act to regulate commerce, to be numbered as section twenty-seven, as follows:

“SEC. 27. That upon application for a certificate of the Interstate Commerce Commission, pursuant to the provisions of this Act, of which notice shall be served on the United States in like manner as is provided with

respect to notices of hearings upon petition in accordance with the provisions of this Act, the commission shall hear and determine the matters as to which its certificate is desired, and may make proper rules and regulations concerning the manner of such application and the conduct of the hearing.

“Any director, officer, or stockholder of such corporation who knowingly and willfully assents to or concurs in any issue of securities forbidden by the provisions of this Act shall be punished by a fine of not more than ten thousand dollars, or imprisonment not longer than three years, or both.

“Nothing in this Act contained shall in any way affect or impair the validity of any such stock, certificates of stock, bonds, or other evidences of indebtedness in the hands of innocent holders for value.”

SEC. 16. That nothing in this Act contained shall undo or impair any proceedings heretofore taken by or before the Interstate Commerce Commission or any of the acts of said commission; and in any cases, proceedings, or matters now pending before it, the commission may exercise any of the powers hereby conferred upon it, as would be proper in cases, proceedings, or matters hereafter initiated; and nothing in this Act contained shall operate to release or affect any obligation, liability, penalty, or forfeiture heretofore existing against or incurred by any person, corporation, or association.

SEC. 17. *That this Act shall take effect and be in force from and after the expiration of sixty days after its passage.*

Amend the title so as to read: “A bill to create a commerce court, and to amend the Act entitled ‘An Act to regulate commerce,’ approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes.”

PRINT OF SUBSTITUTE BILL, SHOWING COMPARISON WITH EXISTING ACT TO REGULATE COMMERCE.

[Existing law printed in roman. Parts stricken out show language in law omitted. Parts in *italics* show provisions not now in the law.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a court of the United States is hereby created which shall be known as the commerce court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act to further regulate commerce with foreign nations and among the States, approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing hereinbefore contained in this Act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof,

which is hereby transferred to and vested in the commerce court.

The jurisdiction of the commerce court over cases of the foregoing classes shall be exclusive; but this Act shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

The commerce court shall be a court of record, and shall have a seal of such form and style as the court may prescribe. The said court shall be composed of five judges, to be from time to time designated and assigned thereto by the Chief Justice of the United States from among the circuit judges of the United States, for the period of five years, except that in the first instance the court shall be composed of the five additional circuit judges to be appointed as hereinafter provided, who shall be designated by the President to serve for one, two, three, four, and five years, respectively, in order that the period of designation of one of the said judges shall expire in each year thereafter. In case of the death, resignation, or termination of assignment of any judge so designated, the Chief Justice shall designate a circuit judge to fill the vacancy so caused and to serve during the unexpired period for which the original designation was made. After the year nineteen hundred and fourteen no circuit judge shall be redesignated to serve on the commerce court until the expiration of at least one year after the expiration of the period of his last previous designation. The judge first designated for the five-year period shall be the presiding judge of said court, and thereafter the judge senior in commission shall be the presiding judge.

Each of the judges during the period of his service in the commerce court shall, on account of the regular sessions of the court being held in the city of Washington,

receive in addition to his salary as circuit judge an expense allowance at the rate of two thousand dollars per annum. The President shall, by and with the advice and consent of the Senate, appoint five additional circuit judges, no two of whom shall be from the same judicial circuit, who shall hold office during good behavior and who shall be from time to time designated and assigned by the Chief Justice of the United States for service in the circuit court for any district, or the circuit court of appeals for any circuit, or in the commerce court.

The associate judges shall have precedence and shall succeed to the place and powers of the presiding judge whenever he may be absent or incapable of acting in the order of the date of their commissions. Four of said judges shall constitute a quorum, and at least a majority of the court shall concur in all decisions.

The court shall also have a clerk and a marshal, with the same duties and powers, so far as they may be appropriate and are not altered by rule of the court, as are now possessed by the clerk and marshal, respectively, of the Supreme Court of the United States. The offices of the clerk and marshal of the court shall be in the city of Washington, in the District of Columbia. The judges of the court shall appoint the clerk and marshal, and may also appoint, if they find it necessary, a deputy clerk and deputy marshal; and such clerk, marshal, deputy clerk, and deputy marshal shall hold office during the pleasure of the court. The salary of the clerk shall be four thousand dollars per annum, the salary of the marshal three thousand dollars per annum, the salary of the deputy clerk two thousand five hundred dollars per annum, and the salary of the deputy marshal two thousand five hundred dollars per annum. The said clerk and marshal may, with the approval of the court, employ all requisite

assistance. The costs and fees in said court shall be established by the court in a table thereof, approved by the Supreme Court of the United States, within four months after the organization of the court; but such costs and fees shall in no case exceed those charged in the Supreme Court of the United States, and shall be accounted for and paid into the Treasury of the United States.

The commerce court shall be always open for the transaction of business. Its regular sessions shall be held in the city of Washington, in the District of Columbia; but the powers of the court or of any judge thereof, or of the clerk, marshal, deputy clerk, or deputy marshal may be exercised anywhere in the United States; and for expedition of the work of the court and the avoidance of undue expense or inconvenience to suitors the court shall hold sessions in different parts of the United States as may be found desirable. The actual and necessary expenses of the judges, clerk, marshal, deputy clerk, and deputy marshal of the court incurred for travel and attendance elsewhere than in the city of Washington shall be paid upon the written and itemized certificate of such judge, clerk, marshal, deputy clerk, or deputy marshal by the marshal of the court, and shall be allowed to him in the statement of his accounts with the United States.

The United States marshals of the several districts outside of the city of Washington in which the commerce court may hold its sessions shall provide, under the direction and with the approval of the Attorney-General of the United States, such rooms in the public buildings of the United States as may be necessary for the court's use; but in case proper rooms can not be provided in such public buildings said marshals, with the approval of the Attorney-General

of the United States, may then lease from time to time other necessary rooms for the court.

If, at any time, the business of the commerce court does not require the continuous services of all the judges, the Chief Justice of the United States may, by writing, signed by him and filed in the Department of State, terminate the assignment of any of the judges or temporarily assign him for service in any circuit court or circuit court of appeals. In case of illness or other disability of any judge assigned to the commerce court, the Chief Justice of the United States may assign any other circuit judge of the United States to act in his place, and may terminate such assignment when the exigence therefor shall cease; and any circuit judge so assigned to act in place of such judge shall, during his assignment, exercise all the powers and perform all the functions of such judge.

In all cases within its jurisdiction the commerce court, and each of the judges assigned thereto, shall, respectively, have and may exercise any and all of the powers of a circuit court of the United States and of the judges of said court, respectively, so far as the same may be appropriate to the effective exercise of the jurisdiction hereby conferred. The commerce court may issue all writs and process appropriate to the full exercise of its jurisdiction and powers and may prescribe the form thereof. It may also, from time to time, establish such rules and regulations concerning pleading, practice, or procedure in cases or matters within its jurisdiction as to the court shall seem wise and proper. Its orders, writs, and process may run, be served, and be returnable anywhere in the United States; and the marshal and deputy marshal of said court and also the United States marshals and deputy marshals in the several districts of the United States shall have like powers and be under like duties to act for and in behalf of said court as

pertain to United States marshals and deputy marshals generally when acting under like conditions concerning suits or matters in the circuits of the United States.

The jurisdiction of the commerce court shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the commerce court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice. In case a defendant to such petition can not be found within the district of his last-known residence or place of business, and the marshal shall so return, service of the petition may be made in the manner provided in section eight of the Act entitled "An Act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from state courts, and for other purposes," approved March third, eighteen hundred and seventy-five. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing and not by demurrer. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon

the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court, and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this Act, or by rule of the court, the practice and procedure in the commerce court shall conform as nearly as may be to that in like cases in a circuit court of the United States.

SEC. 2. That final judgment or decree of the commerce court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a circuit court of the United States to the Supreme Court, and the commerce court may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the commerce court as the case may require.

Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the commerce court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require.

Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court.

SEC. 3. That suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the commerce court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Com-

merce Commission; but the commerce court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. No order or injunction so restraining or suspending an order of the Interstate Commerce Commission shall be made by the commerce court otherwise than upon notice and after hearing, except that in cases where irreparable damage would otherwise ensue to the petitioner, said court, or a judge thereof, may allow a temporary stay or suspension in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of his order, pending application to the court for its order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judge making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until its decision upon the application.

SEC. 4. That from and after the passage of this Act all cases and proceedings in the commerce court which, but for this Act, would be brought by or against the Interstate Commerce Commission shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the commerce court whenever, though it has not been made a party, public interests are involved.

SEC. 5. That the Attorney-General shall have charge and control of the interests of the Government in all cases and proceedings in the commerce court and in the Supreme Court of the United States upon appeal from the com-

merce court; and if in his opinion the public interest requires it, may retain and employ in the name of the United States such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney-General shall stipulate with such special attorneys and counsel the amount of their compensation and shall have supervision of their action: *Provided, That parties in interest to the proceeding before the commission, in which an order or requirement is made, may appear and be represented by their counsel, upon such terms as the court may prescribe, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; but such appearance and representation shall not interfere with the control of the case by the Attorney-General, and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matter of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits.*

SEC. 6. That until the opening of the commerce court as in section one hereof provided, all cases and proceedings of which from that time the commerce court is hereby given exclusive jurisdiction may be brought in the same courts and conducted in like manner and with like effect as is now provided by law; and if any such case or proceeding shall have gone to final judgment or decree before the opening of said court appeal may be taken from such final judgment or decree in like manner and with like effect as is now provided by law. Any such case or proceeding within the jurisdiction of the commerce court which may have been begun in any other court as hereby allowed before the said date shall be forthwith transferred

to the commerce court, if it has not yet proceeded to final judgment or decree in such other court unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in the circuit court to final judgment or decree and further proceeding thereafter, and appeal may be taken direct to the Supreme Court, and if remanded such cause may be sent back to the circuit court or to the commerce court for further proceeding as the Supreme Court shall direct; and all previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the commerce court and to the same right of subsequent action in the case or proceeding as if the transferred case or proceeding had been originally begun in the commerce court. The clerk of the court from which any case or proceeding is so transferred to the commerce court shall transmit to and file in the commerce court the originals of all papers filed in such case or proceeding and a certified transcript of all record entries in the case or proceeding up to the time of transfer.

SEC. 6a. That section one of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby now amended so as to read as follows:

"SECTION 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and

partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State, ~~or Territory of the United States~~, or ~~the District of Columbia~~ *the United States*, to any other State, ~~or Territory, or District~~ of the United States, ~~or the District of Columbia~~ or from one place in a Territory *or District* to another place in the same Territory *or District*, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: ~~Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.~~

“The term ‘common carrier’ as used in this Act shall include express companies and sleeping-car companies. The term ‘railroad’ as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term

‘transportation’ shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; *and to provide reasonable facilities for operating such through routes, and to exchange, interchange, and return cars used therein, and to make reasonable rules and regulations with respect thereto and for operation of such through routes, and providing for reasonable compensation to those entitled thereto, for the use of, injury to, destruction or loss of any of such cars on the line of any carrier operating a part of such through or joint routes.*

“All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing,

and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this Act which may be necessary or convenient to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful.

“No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary care takers of live stock, poultry, *milk*, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents,

witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *Provided further*, That the term 'employees' as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

“ From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to

any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

“ Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper *or owner of such lateral, branch line of railroad*, such shipper *or owner of such lateral, branch line of railroad* may make complaint to the commission, as provided in section thirteen of this Act, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order,

and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the commission, other than orders for the payment of money.”

SEC. 6b. That section four of said Act to regulate commerce be amended so as to read as follows :

“SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, ~~under substantially similar circumstances and conditions~~ for a shorter than for a longer distance over the same line *or route* in the same direction, the shorter being included within the longer distance, *or to charge any greater compensation as a through route than the aggregate of the local rates*; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge ~~and~~ or receive as great compensation for a shorter as for a longer distance: *Provided, however, That upon application to the Interstate Commerce Commission appointed under the provisions of this Act, such common carrier may in special cases, after investigation, by the commission be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act: Provided further, That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.*”

SEC. 7. That section five of said Act to regulate commerce, as heretofore amended, is hereby now amended so as to read as follows:

“Agreements between common carriers subject to this Act specifying the classifications of freight and the rates, fares, and charges for transportation of passengers and freight which they agree to establish, shall not be unlawful under this Act as amended or under the Act approved July second, eighteen hundred and ninety, entitled ‘An Act to protect trade and commerce against unlawful restraints and monopolies,’ or otherwise if a copy of such agreement in such form and in such detail as the commission may prescribe is filed with the Interstate Commerce Commission within twenty days after it is made, and before or when any schedule of any rate, fare, or charge, or any classification made pursuant to the agreement is filed with the commission; but all provisions of this Act, as amended, and any future amendments thereof shall apply to such agreed rates, fares, and charges, and such agreed classifications, and the Interstate Commerce Commission shall have like control over and power of action concerning any agreed rate, fare, charge, or classification, including suspension of the rate or classification before it becomes effective, and pending investigation of its propriety, as if the rate, fare, charge, or classification had been made without agreement, and any party to such agreement may cancel it as to all or any of the agreed rates, fares, charges, or classifications, by thirty days’ notice in writing to the other parties and to the Interstate Commerce Commission, and such agreement of carriers, though filed with the commission, shall not be deemed a tariff or schedule of rates, fares, or charges collectible from the public, or operate itself to alter any such tariff or schedule whensoever filed and published.” ~~That~~ But it shall be unlawful for any

common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of ~~freights~~ *traffic* of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of ~~freights~~ *traffic* as aforesaid, each day of its continuance shall be deemed a separate offense.

SEC. 8. That section six of said Act to regulate commerce, as heretofore amended, is hereby now amended by adding three new paragraphs at the end thereof, as follows:

“In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.”

“If any common carrier subject to this Act, after written request made upon the agent of such carrier hereinafter in this section referred to by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which

the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.’’

“It shall be the duty of every such common carrier to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request in substantially the following form: ‘The Station Agent of the ——— Company at ——— Station,’ together with the name of the proper post-office, inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any post-office.’”

SEC. 8a. That section ten of said Act to regulate commerce, as heretofore amended, be now amended so as to read as follows:

“SEC. 10. That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act

prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

“ Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was

committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

“ Any person ~~and any officer or agent of any corporation or company~~, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, *directly or indirectly, himself or by employee, agent, officer, or otherwise*, by false billing, false classification, false weighing, false representation of the contents of the package or *the substance of the property*, false report of weight, *false statement*, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent ~~or agents~~, or officer, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, or *who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement, or entry, obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regu-*

lar rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: Provided, That the penalty of imprisonment shall not apply to artificial persons.

“ If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action ~~on the case~~ to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.”

SEC. 8b. That section thirteen of said Act to regulate commerce be amended so as to read as follows:

“SEC. 13. That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier, subject to the provisions of this Act, in contravention of the provisions thereof, or relating in any way to the rates demanded, charged, or collected by any common carrier, subject to the provisions of this Act, for the transportation of persons or property, as defined in section one of this Act, or relating to or affecting any classification of property with reference to which such rates exist, or relating to or affecting any regulations or practices whatsoever of such carrier, or of the failure of such carrier to establish, observe, and enforce just and reasonable classifications of property and just and reasonable regulations and practices, as required by section one of this Act, may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the charges complaint thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, ~~said~~ the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to in-

investigate the matters complained of in such manner and by such means as it shall deem proper.

“Said commission shall, in like manner *and with the same authority and powers*, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, ~~and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made; and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act, by any common carrier, subject to its provisions or the enforcement of any authority granted by this Act to the said commission. And the said commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.~~”

SEC. 9. That section fifteen of said Act to regulate commerce, as heretofore amended, is hereby now amended so as to read as follows:

“SEC. 15. That ~~the commission is authorized and empowered and it shall be its duty~~ whenever, after full hearing upon a complaint made as provided in section thirteen

of this Act, ~~or upon complaint of any common carrier,~~ or after full hearing under an order for investigation and hearing made by the commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the commission ~~it~~ shall be of ~~the~~ opinion that any ~~of the~~ individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act for the transportation of persons or property as defined in the first section of this Act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers ~~affecting such rates~~ are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, *the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice in respect to such transportation is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and establish, observe, and enforce the regulation or practice so prescribed. And where the action of the commission is with respect to terminal, switching, icing, storage, elevation, or other special charges, which are only made when the through rate for the transportation is also imposed, and such special charges become part of the aggregate of charges for the*

entire service, the commission may consider such special charges separately or in connection with the total charges or rates and prescribe the maximum rates and charges which in the aggregate or separately are just and reasonable.

“ All orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or modified or set aside by the commission, or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

“ *Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission upon filing with such schedule and delivering to the carrier or carriers*

affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective.

“The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, ~~when that may be necessary to give effect to any provision of this Act and~~ whenever the carriers ~~complained of themselves~~ shall have refused or neglected to establish voluntarily establish such through routes or joint classifications and or joint rates, ~~provided no reasonable or satisfactory through route exists,~~ and this provision shall apply when one of the connecting carriers is a water line. But this Act shall not be construed to affect traffic originating and ending on the line of any water carrier and transported wholly by water and shall not be held to affect the limitation of liability of water carriers as now provided by law. The commission shall not, however, establish any through route, classification, or rate between street electric passen-

ger railways not engaged in the general business of transporting freight in addition to their passenger business and railroads of a different character.

“In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment there are two or more through routes, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to such routing instructions.

“If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the

same force and effect and be enforced in like manner as the orders above provided for ~~in~~ *under* this section.

“The foregoing enumeration of powers shall not exclude any power which the commission would otherwise have in the making of an order under the provisions of this Act.”

SEC. 10. That section sixteen of said Act to regulate commerce, as heretofore amended, is hereby now amended, so as to read as follows:

“SEC. 16. That if, after hearing on a complaint made as provided in section thirteen of this Act, the commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

“If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims damages, and the order of the commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the commission shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of dam-

ages shall be filed with the commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court within one year from the date of the order, and not after: *Provided*, That claims accrued prior to the passage of this Act may be presented within one year.

“In such suits all parties in whose favor the commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

“Every order of the commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

“The commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

“It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

“ Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

“ The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

“ It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

~~“ The commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this Act, paying the expenses of such employment out of its own appropriation.~~

~~“ If any carrier fails or neglects to obey any order of the commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the commission in its own name, may apply to the circuit court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the order and the respect in which the carrier has failed of obedience, and~~

~~shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.~~

~~“From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.~~

~~“The venue of suits brought in any of the circuit courts of the United States against the commission to enjoin, set aside, annul, or suspend any order or requirement of the commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. And if the order or requirement has been made against two or more carriers then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of~~

~~Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts. The provisions of 'An Act to expedite the hearing and determination of suits in equity, and so forth,' approved February eleventh, nineteen hundred and three, shall be, and are, hereby, made applicable to all such suits including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the commission, or any of the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty seven, and all Acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney General in every such case to file the certificate provided for in said expediting Act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes: *Provided*, That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the commission shall be granted except on hearing after not less than five days' notice to the commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: *Provided further*, That the appeal must be taken within thirty days from the entry of such order or decree and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.~~

~~“The copies of schedules and tariffs of rates, fares, and charges, and of all contracts, agreements, or arrangements between common carriers filed with the commission as herein provided, and the statistics, tables, and figures contained in the annual reports of carriers made to the commission, as required by the provisions of this Act, shall be preserved as public records in the custody of the secretary of the commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of or extracts from any of said schedules, tariffs, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary under its seal, shall be received in evidence with like effect as the originals.~~

“The commission may employ such attorneys as it finds necessary for proper legal aid and service of the commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the commission's own instance or upon complaint; and the expenses of such employment shall be paid out of the appropriation for the commission.

“If any carrier fails or neglects to obey any order of the commission other than for the payment of money, while the same is in effect, any party injured thereby, or the United States, by its Attorney-General, may apply to the commerce court for enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience

of such order, or to enjoin upon it or them obedience to the same.

“ The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the commission as required under the provisions of this Act, and certificates issued by the commission in accordance with any provision of law, shall be preserved as public records in the custody of the secretary of the commission, and shall be received as *prima facie* evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, reports, or certificates made public records as aforesaid certified by the secretary, under the commission's seal, shall be received in evidence with like effect as the originals.”

SEC. 11. That section twenty of said Act to regulate commerce, as heretofore amended, is hereby amended by striking out the following paragraph:

~~“Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission for making and filing the same, or shall fail to make~~

~~specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the commission it shall be subject to the forfeitures last above provided:”~~

And by ~~adding~~ *inserting* in lieu of the paragraph so stricken out the following :

“Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, *or on the thirty-first day of December in each year if the commission by order substitute that period for the year ending June thirtieth*, and shall be made out under oath and filed with the commission at its office in Washington ~~on or before the thirtieth day of September then next following~~ *within three months after the close of the year for which the report is made*, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority *by general or special orders* to require

said carriers, *or any of them*, to file monthly reports of earnings and expenses, *and to file periodical or special, or both periodical and special, reports* ~~within a specified period~~ concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided.”

SEC. 12. *That no railroad corporation which is a common carrier subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as amended, shall hereafter acquire, directly or indirectly, any interest of whatsoever kind in the capital stock of any railroad or water carrier corporation, or purchase or lease any railroad or water line which is directly and substantially competitive with that of such first-named corporation, nor shall any water carrier corporation engaged in interstate commerce hereafter acquire, directly or indirectly, any interest of whatsoever kind in the capital stock of any railroad corporation, or purchase or lease any railroad that is subject to the Act to regulate commerce and which is directly and substantially competitive with such water line; nor shall any such railroad or water carrier corporation have after the first day of July, nineteen hundred and eleven, as an officer or a director any person who may also be at the same time an officer or director of any such competing corporation; and any corporation which acquires any interest in capital stock, or which purchases or leases a railroad or water line contrary to this section, or which holds or retains any interest in capital stock or in a railroad or water line hereafter*

acquired in violation of this section, or which shall have and retain as an officer or director after the first day of July, nineteen hundred and eleven, any person who is also an officer or director of any such competing corporation, shall be fined five thousand dollars for each day or part of day during which it holds or retains such interest unlawfully acquired, or retains such prohibited officer or director.

Any attempted acquisition of an interest in capital stock or the purchase or lease of a railroad or water line contrary to this section shall be void, and may be enjoined by any court of competent jurisdiction at the suit of the United States; and the holding or retention of any interest in capital stock or the acquisition of a railroad or water line contrary to this section may likewise be enjoined in any court of competent jurisdiction at the suit of the United States; but any railroad or water carrier corporation, being a common carrier as aforesaid, which proposes to acquire any interest in the capital stock or to lease or purchase a railroad or water line of any other corporation may apply to the commerce court by its petition for that purpose, filed in advance of actual taking of such interest in capital stock or the acquisition of such railroad or water line, but after an agreement or contract for its acquisition has been made with a stipulation therein that such agreement or contract shall take effect in case it is found by the commerce court not to violate this section, for an adjudication as between such corporation and the United States, whether or not the proposed acquisition of an interest in the capital stock or the proposed purchase or lease of the railroad or water line of another corporation violates this section, and the adjudication of the commerce court upon such application shall have the ordinary effect of judgments as an estoppel between the parties.

The commerce court is hereby given jurisdiction to hear and determine such applications and to take all proper proceedings thereon, and the filing of said petition shall be taken as a consent on the part of the corporation making the application that the commerce court issue at once an interlocutory injunction against the proposed acquisition pending final determination by the court concerning its legality hereunder. If the commerce court finally adjudges the proposed transaction to be unlawful, it shall by its decree permanently enjoin the proposed acquisition. In case the United States shall have sued to restrain the proposed acquisition in a court other than the commerce court before the corporation proposing to make such acquisition files its petition as aforesaid in the commerce court, such suit of the United States shall be stayed pending the decision of the commerce court if it has not yet proceeded to final decree, and said suit of the United States shall be dismissed if the commerce court finally adjudges that the proposed acquisition does not violate this section: Provided, That nothing herein contained shall be construed to affect in any way any suit or action pending at the passage of this Act, nor the rights or liabilities of any party thereto, nor to authorize or validate the acquisition by a railroad corporation, being a common carrier subject to said Act to regulate commerce, as amended, of any interest in the capital stock, or the purchase or lease of the railroad or water line of any other railroad or water carrier company, in violation of any Act of Congress, including the Act approved July second, eighteen hundred and ninety, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies:" And provided further, That the right to so apply to said commerce court shall not extend to any railroad corporation now holding stock in any other railroad corporation

in violation of any Act of Congress, including the said Act approved July second, eighteen hundred and ninety, which holding is the subject or in any way involved in any suit or action pending at the date of the passage of this Act.

SEC. 13. That a new section be added to said Act to regulate commerce, to be numbered as section twenty-five, as follows:

“SEC. 25. That no railroad corporation which is a common carrier subject to the provisions of this Act as amended shall hereafter issue for any purpose connected with or relating to any part of its business governed by the provisions of this Act as amended any stock, bonds, notes, or other evidences of indebtedness to an amount exceeding that which may from time to time be reasonably necessary for the purpose for which such issue of stock, bonds, notes, or other evidences of indebtedness may be authorized.

“ The amount of said securities to be thus issued, excepting notes maturing not more than two years from the date of their issue, shall be determined by the Interstate Commerce Commission, and any sale of said securities shall be at a price not less than their reasonable value, which, excepting as to notes maturing not more than two years from the date of their issue, shall be ascertained and fixed by the commission. Said commission shall render a decision upon an application for such issue within thirty days after the final hearing thereon. Such decision shall be in writing, shall assign the reasons therefor, shall, if authorizing such issue, specify the respective amounts of stock, bonds, or notes or other evidences of indebtedness as aforesaid which are authorized to be issued for the respective purposes to which the proceeds thereof are to be applied. A certificate of the decision of said commission shall, before the stock, bonds, or notes or other evidences of

indebtedness as aforesaid are issued, be delivered to the corporation. Such corporation shall not apply the proceeds of such stock, bonds, or notes or other evidences of indebtedness as aforesaid to any purpose not specified in such certificate, and no property, services, or other thing than money shall be taken in payment to the corporation of the required price of such stock, certificate of stock, bond, or other evidence of indebtedness, except at the fair value of such property, services, or other thing than money, which shall be ascertained by the Interstate Commerce Commission and stated in a certificate issued by it to such corporation, or to any person or persons intending to form such corporation, and recorded with the commission before the issue of said stock, certificate of stock, or evidence of indebtedness: Provided, That nothing herein contained shall be construed to prevent a corporation subject to this Act from issuing its stock, bonds, or other obligations to refund bonds or other obligations heretofore or hereafter issued and outstanding to an amount reasonably necessary for that purpose determined as hereinbefore provided.

“ No railroad corporation subject to the provisions of this Act as amended shall hereafter, for any purpose connected with or relating to any part of its business governed by this Act, issue any capital stock convertible into other capital stock of such railroad corporation unless by the terms of the certificate representing the stock so convertible the amount, par value, of capital stock that the holder of such certificate is entitled to receive in exchange therefor shall be equal to or less than the par value of the shares of stock represented by such certificate of convertible stock; but nothing contained in this Act shall be deemed to prohibit the issue by any such corporation of its capital stock in exchange for and in accordance with the

terms of such convertible stock issued in accordance with the provisions of this paragraph.

“ Nothing in this section contained shall be construed to prohibit the mortgage or pledge by any railroad corporation subject to the provisions of this Act as amended of any bond or other evidence of indebtedness issued by such railroad corporation as security for or as part security for any note, bond, or other evidence of indebtedness issued by or loan made to such railroad corporation which shall not be issued or made in violation of the provisions of this Act: Provided, That the terms of said loan and of such notes, bonds, or other evidences of indebtedness, if any, shall provide that none of said pledged bonds or other evidences of indebtedness shall, upon nonpayment of the notes, bonds, or other evidences of indebtedness which they are pledged to secure, or upon nonperformance of any of the conditions thereof, be sold or become the property of the holders of the notes, bonds, or other evidences of indebtedness so secured, either directly or through a trustee for their benefit, except at or through public sale, notice whereof shall be published at least once a week for not less than three successive weeks prior thereto in at least one daily newspaper of general circulation published in the place where such sale shall take place: And provided further, That if such notes, bonds, or other evidences of indebtedness, if any, shall provide that the owners thereof shall have the right to convert the same into the bonds or other evidences of indebtedness so mortgaged or pledged, the Interstate Commerce Commission, previously to the making of such loan, shall have ascertained and stated, in a certificate issued by the commission to such corporation, or to any person or persons intending to organize such corporation and recorded with the commission or otherwise, as authorized by this Act, the reasonable market or

selling value of such bonds or other evidences of indebtedness so mortgaged or pledged and the rate which said reasonable market or selling value bears to the reasonable market or selling value of such secured notes, bonds, or other evidences of indebtedness, and that such secured notes, bonds, or other evidences of indebtedness shall not provide that the owners thereof shall have the right, upon such conversion, to receive in exchange therefor bonds or other evidences of indebtedness so mortgaged or pledged to an amount greater than would be receivable at the rate so found and stated in such certificate of the commission.

“ Nothing in this Act contained shall be taken to prohibit the issue of any bond or other evidence of indebtedness pursuant to the terms of any instrument heretofore executed, provided the same shall not be sold except in conformity with the provisions of this section.

“ Nothing in this Act contained shall in any way affect or impair the validity of any mortgage or pledge of any capital stock, certificate of stock, bond, or other evidence of indebtedness now mortgaged or pledged as security for or as part security for any loan heretofore made to any such corporation, or prohibit the sale, upon foreclosure or otherwise, of any such mortgaged or pledged stock, certificate of stock, bonds, or other evidences of indebtedness upon the terms and conditions provided in the instrument, if any, whereunder such securities may have been pledged or in the contract of loan; and nothing in this section contained shall be construed in any way to prohibit or affect the issue of any capital stock or the delivery of any certificate of stock, or the issue of any bond or other evidence of indebtedness in exchange for or to provide for the retirement of any capital stock, certificate of stock, bond, or other evidence of indebtedness now outstanding or provided to be issued, or the pledge of the exchanged or retired

stock or securities on such terms and conditions as may be provided in the instruments whereunder any of the stocks, bonds, or other evidences of indebtedness referred to in this paragraph are respectively issued or authorized to be issued.”

SEC. 14. That a new section be added to said Act to regulate commerce, to be numbered as section twenty-six, as follows:

“SEC. 26. That in case at any time it shall be proposed by or pursuant to any plan of reorganization of any railroad corporation or corporations incorporated prior to January first, nineteen hundred and ten, the properties whereof shall be in the hands of a receiver or of receivers, or shall be subject to be sold in any suit or suits or other judicial proceedings for foreclosure of any mortgage or deed of trust heretofore executed, or for the dissolution or winding up of such corporation, or to procure the satisfaction of its debts or the application of its property thereto, pending at the time of such proposal, that any corporation utilized or to be utilized for the purposes of such reorganization, which at such time shall be, or, when organized and operating, will be, subject to the provisions of this Act, as amended (every corporation so utilized or to be utilized being hereinafter referred to by the term ‘New corporation’), shall issue stock and bonds and other evidences of indebtedness, or any thereof, for any purpose connected with or relating to any part of its business governed by this Act, as amended, application for any certificate of the Interstate Commerce Commission that may be requisite under the provisions of this section may be made by any person, committee, or representatives of any committee, or by managers having in charge the formulating or carrying out of any such plan of reorganization, and such certificate may be issued to such person, com-

mittee, representatives, or managers for the use of the new corporation; and the issue pursuant to such plan of reorganization by any new corporation of stock, whether of a single class or of two or more classes, as may be authorized by law, to an amount in the aggregate not exceeding the fair estimated value of the property of the corporation or corporations so reorganized or to be reorganized, which shall be ascertained by the Interstate Commerce Commission, and which aggregate amount shall be stated in a certificate issued by said commission to such person, committee, representatives, or managers for the use of the new corporation, and in no case shall exceed the aggregate amount of the par value of the stocks of the corporation or corporations reorganized or to be reorganized; and the issue by any new corporation of bonds and other evidences of indebtedness, whether unsecured or secured by mortgage upon said properties or otherwise, to an aggregate amount not exceeding the amount of new money paid to the new corporation pursuant to such plan of reorganization, and the amounts of bonds and other obligations and debts, including receiver's liabilities, which at the time of such sale or sales may have constituted claims or charges, whether legal or equitable, upon or against the corporation or corporations so reorganized, or the properties thereof, and provision for the payment of which or the delivery of securities of the new corporation in exchange for which shall be made in such plan shall not be deemed to be prohibited by anything contained in this Act: Provided, That the aggregate amount of interest charges agreed to be paid by the new corporation or to which its property will be subject shall not exceed the aggregate amount of the interest charges to which the corporation or corporations so reorganized or their properties shall have been subject;

and nothing in this Act shall be deemed to prohibit the new corporation from assuming any bonds, debts, or other obligations of the corporation or corporations so reorganized in place of which it might, in accordance with the rules prescribed by this section, issue its own stocks, bonds, or other obligations.

“In case two or more railroad corporations subject to the provisions of this Act, as amended, shall be consolidated or merged pursuant to the laws of a State or States applicable thereto and such consolidation or merger shall consist in uniting the organizations, properties, businesses, and stocks of said corporations; and if the Interstate Commerce Commission shall have ascertained and stated in a certificate issued by it to the corporations in respect to which such consolidation or merger is to take place or shall have taken place, or to one of them (or to any person, committee, or representatives of any committee, or to managers having in charge the formulating or carrying out of any plan of reorganization such as is hereinbefore mentioned under which the corporation that is to issue new securities to be distributed under such plan will be a corporation resulting from any consolidation or consolidations, merger or mergers), that the stock to be issued by such consolidated corporation and the bonds and other obligations, if any, to be assumed and issued thereby does not exceed the fair estimated value of the properties of such consolidated corporation, nothing in this Act contained shall be deemed to prohibit the issue of such stock and bonds and other obligations, or any of them, or the assumption of all or any of the bonds or other obligations of the corporations so consolidated or merged.

“Nothing in this Act contained shall prevent a railroad corporation, subject to the provisions of this Act as amended, from acquiring the stock and bonds of another

railroad corporation, subject to said Act, which is not directly and substantially competitive with that of such first-mentioned corporation, by the issue of its own stock and bonds, provided the aggregate amount of the par values of the stock and bonds so issued shall not exceed the fair value of the property of the corporation whose stock and bonds are so acquired, which value shall be ascertained by the Interstate Commerce Commission.

“ But nothing herein contained shall be construed to authorize or to validate or permit the consolidation or merger in any manner of two or more corporations in violation of any Act of Congress, including the Act approved July second, eighteen hundred and ninety entitled ‘An Act to protect trade and commerce against unlawful restraints and monopolies.’ ”

SEC. 15. That a new section be added to said Act to regulate commerce, to be numbered as section twenty-seven, as follows:

“ SEC. 27. That upon application for a certificate of the Interstate Commerce Commission, pursuant to the provisions of this Act, of which notice shall be served on the United States in like manner as is provided with respect to notices of hearings upon petition in accordance with the provisions of this Act, the commission shall hear and determine the matters as to which its certificate is desired, and may make proper rules and regulations concerning the manner of such application and the conduct of the hearing.

“ Any director, officer, or stockholder of such corporation who knowingly and willfully assents to or concurs in any issue of securities forbidden by the provisions of this Act shall be punished by a fine of not more than ten thousand dollars, or imprisonment not longer than three years, or both.

“ Nothing in this Act contained shall in any way affect or impair the validity of any such stock, certificates of stock, bonds, or other evidences of indebtedness in the hands of innocent holders for value.”

SEC. 16. That nothing in this Act contained shall undo or impair any proceedings heretofore taken by or before the Interstate Commerce Commission or any of the acts of said commission; and in any cases, proceedings, or matters now pending before it, the commission may exercise any of the powers hereby conferred upon it, as would be proper in cases, proceedings, or matters hereafter initiated; and nothing in this Act contained shall operate to release or affect any obligation, liability, penalty, or forfeiture heretofore existing against or incurred by any person, corporation, or association.

SEC. 17. That this Act shall take effect and be in force from and after the expiration of sixty days after its passage.

VIEWS OF THE MINORITY.

The minority members of the Interstate and Foreign Commerce Committee, whose names are hereto signed, are not in accord with the views of the majority of the committee in the favorable report on H. R. 17536, "To create an interstate commerce court and to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and heretofore amended, and for other purposes," and our reasons therefor are as follows:

In our opinion, the efficient enforcement and the honest acceptance by the railroads of the provisions of the Hepburn rate law since its passage in 1906, has substantially eliminated the vicious and harmful practices generally engaged in by railroads, prior to that date. This has brought great relief to the people. It was freely admitted on the protracted hearings before this committee, by able and experienced railroad men, as well as by representative men of the shippers of the country, that the Hepburn rate law was producing satisfactory results and that existing conditions did not require any amendment of the fundamental policy that the law was based on. In the nature of things, certain amendments become necessary to the laws regulating our vast system of railroads covering a mileage of quite 230,000 miles. There are amendments and certain provisions of the bill under consideration that are commendable, and we indorse, but they are not of that character to induce us to support the bill which contains provisions that in principle we condemn and believe is not, in fact, to the best interest of the people and the carriers.

No untried experimental legislation, of a doubtful constitutional character should be entered upon by Congress at this time, when neither consumers, shippers, nor railroads ask for or demand such legislation. We are opposed to striking out the proviso in section 1 of the act to regulate commerce as amended, as follows:

That the provisions of this act shall not apply to the transportation of property, or to the receiving, delivering, storage, or handling of property wholly within one State, and not shipped to or from a foreign country, from or to any State or Territory, as aforesaid.

We object to the amendment of section 5 of act of commerce as amended, by making it lawful for common carriers to establish by "agreement" a schedule of rates. This is a dangerous step in the direction of "pooling," and indirectly and by implication repeals the important provisions of the Sherman antitrust law.

We object to the provisions of section 3 of the bill that authorizes the commerce court to restrain or suspend the commission's order "upon notice after hearing." The length of notice should be specified. It should be not less than five days. Section 16 of the present railroad law prohibited an injunction, interlocutory order, or decree suspending or restraining the enforcement of an order of the commission to be granted, except on hearing and not less than five days' notice to the commission.

The commerce court is provided for in the first six sections of the bill. It is to be exclusively a railroad court for the trial of the complaints of carriers seeking to annul, set aside, or modify the orders of the commission and provisions under the Elkins law. A special court, created to hear exclusively a certain class of railroad cases is not congenial to or favored by the genius or policy of the judicial system of our country and ought not to be authorized by the Congress. It is undoubtedly true if certain provisions of this bill were eliminated the commerce court would be stripped largely of its proposed work.

There is no necessity for this commerce court; and the testimony of two of the commissioners who appeared before the committee goes to clearly indicate that if the court is established it will be without sufficient business to occupy its time. If this is true, the court is a useless and unwise extravagance.

We have heard no complaint made of the present system about the orders of the commerce commission being submitted to the circuit courts as now organized. Such proceedings differ from the ordinary appeal as provided by the law in other cases, for the judgment of the revising judge is in no manner substituted for that of the commission. It is true that the advocates for the commerce court urge that such a court will "expedite" railroad cases and make "uniform" the decisions on railroad subjects. How does the expedition take place in the commerce court any more than in the circuit court? The evidence will have to be taken by or under the direction of the commerce court, as it is done in the circuit court, which is by the appointment of a master in chancery. The delay in preparing the evidence will be just the same in the commerce court as it now is in the circuit court, because it will be taken in the same manner. The complaint heretofore about delay has been in connection with the taking of evidence, and not with the dispatch of the business by the judge.

We all recognize the fact that the Supreme Court of the United States is the only court in this country that has the power to give uniformity to the decisions of the inferior federal courts. It will perform this service for the commerce court just as it has been doing since the establishment of our Government for the circuit court. The commerce court tends, as we apprehend, to give broader jurisdiction over the orders of the commission. The strength of the claim of the people for good service and an equal and fair rate from the carriers depends upon the latitude that the law gives to the judgment of the commission in declaring a rate.

We object to the fourth and fifth sections of the bill because they practically transfer the important and essential work of the Interstate Commerce Commission to the Department of Justice. The commission is now, and was intended to be from its organization, an independent tribunal of the rights of the people and the carriers. The Department of Justice is a political department of this Government, and its appointees who direct the policies of the department are the representatives and the supporters of the present political administration of the country. If this bill should become a law, a suit instead of being against the commission must be against "The United States," and the Attorney-General and his subalterans take exclusive charge of the case that was heard, considered, and defended in the commission by its able and experienced lawyers.

If the Attorney-General should be led to believe that the commission had made any kind of a mistake in the order made fixing a reasonable rate, then the Attorney-General could direct the abandonment of the case. There will necessarily hereafter be less use for such a court as the commerce court than ever before, for the reason that the Supreme Court of the United States, in the recent decision of *Interstate Commerce Commission v. Illinois Central Railroad*, decided January 10, 1910, has limited the jurisdiction of the courts over the orders of the commission down to two plain, simple questions: Has the commission followed the procedure required by law? and, next, Does the proceedings on their face show that the enforcement of the order of the commission would violate constitutional property rights? How is it possible for the commerce court to pass on such legal questions with more ability, uniformity, or expedition than our circuit courts? It is claimed that the commerce court will give us "expert judges."

Common observation leads us to believe that the most strenuous differences of opinion occur among "learned experts" in all the practical business affairs of life. We prefer the "all-round judge," ready to learnedly and fairly apply the principles of justice to all classes of cases and litigants as they come before him. But what are the provisions of the bill as to securing these experts? The President of the United States is requested to appoint five new federal judges, and these new federal judges are each, respectively, to be appointed in the first instance for terms of one, two, three, four, and five years, and as each one's term expires he is ordered elsewhere and the Chief Justice of the Supreme Court of the United States designates one of the regular circuit judges to take the place, and we ask, Why such a procedure?

We object most earnestly to sections 12, 13, and 14 as now numbered in the bill, relating to the acquisition by one railroad company of capital stock in another railroad company and the issuance for any purpose of any stocks or bonds by carriers; and one of the important questions is whether the capital stock so purchased belonged to a competitor or not. This question is submitted by the bill to the judicial interpretation of the commerce court when what is a "competitive" line is preeminently a question of fact. We are opposed to allowing the commerce court to permit competing lines to acquire each other.

The issuance of all stocks and bonds is forbidden, except under the supervision of the commerce court. Mergers, reorganization, and consolidation of railroads are forbidden on conditions involving the most complicated, intricate, and untried scheme of legislation that Congress has ever been invited to enter upon. Its constitutionality is certainly of a doubtful character, and not yet passed upon by the Supreme Court. The regulation of the exchange of capital stock belonging to a carrier can not be considered interstate commerce. It is that class of legislation that we believe invades the individual and personal rights of the citizen, also the artificial corporation by declaring by a law when he can sell his property, when he shall buy property, and for what price he shall buy and sell his property, wholly disconnected with the regulation of interstate commerce.

We are earnest advocates of federal regulation or supervision of interstate railroads, but we do not believe that "regulation" by the Federal Government can lawfully invade the business management and take charge of the operation of intrastate railroads. We believe that it is wrong whenever and wherever Congress goes beyond its

proper field for the prevention of unreasonable charges and undue discriminations; that it is not lawful, for such a policy denies to the railroads the protection given to other property in other forms. This proposed legislation for the regulation of stocks and bonds certainly tends to restrict investment by impairment of credit and discouraging new railroad enterprises, and will retard the enlargement of transportation facilities which the country so demands.

Even outside of that view, the inauguration of such a policy applicable to the regulation of our railroads, certainly will discourage the construction of new and independent lines of railroad, for such a railroad would be without established character, and with only limited capital stock, necessarily relies on getting credit to build its line. Such a policy is extremely paternalistic. Its enforcement would unavoidably raise many serious questions of the rights granted in the charters of different States to railroad corporations, authorizing mergers, consolidations, reorganization, together with the issuance of capital stock and bonds. Why create controversy between federal and state authorities on a matter that does not pretend to exercise influence or control in the matter of the regulation of railroads by Congress, to secure for the public a just and reasonable rate charge, and to prevent preferential and discriminatory regulations? That is the object and purpose of the present rate law, and should be the policy of all regulating railroad legislation.

The apparent purpose of this proposed drastic and unprecedented legislation is to protect and guarantee the owners of capital stock of a railroad that has engaged in overcapitalization. Physical valuation of the property of the railroad, the minority suggested, would tend greatly as a beneficial factor to be considered in aiding the commission to say what a fair rate was, and thus relieve it of relying entirely on the perplexing stock exchange ledgerdermain in the fluctuating market price of the capital stock of all the railroads of the country.

It has been a matter of notoriety that this bill was "submitted" to the committee as "the administration bill." Actuated by a sentiment of delicacy and an honorable restraint, imposed on us in referring to what occurs or is said in the privacy of discussion in the executive deliberations of the committee, we deemed it our duty to refrain from making any public reference to the bill by such title. But we feel now that we are authorized, even without the fear of political criticism; to speak of the unprecedented, unbecoming, and embarrassing circumstances attending the consideration of this bill, because our justification is emphasized in the following statements taken from the report of the majority of the committee as follows:

The bill under consideration (H. R. 17536) was introduced by Mr. Townsend on January 10 last, and as introduced is the bill drafted by the Attorney-General and referred to in the message of the President.

Again, the report says on page 6:

A number of amendments were suggested by the Attorney-General, who had drafted the original bill.

Again, the report says on page 13:

Subsequently new propositions were prepared and submitted by the Attorney-General relating to this subject-matter.

Thus stands the record. Our fathers were wise men, and in framing the great instrument of our Constitution ordained that all legisla-

tive powers granted shall be vested in a Congress; the judicial power shall be vested in one Supreme Court and such inferior courts as Congress may ordain or establish. The executive power is vested in a President, and section 3 of article 2, in defining the duties of the President, says:

He shall from time to time give to the Congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary and expedient.

The manner by which the President shall approach the Congress on a legislative subject is plain, simple, and worthy of commendation. Such a tendency as is here demonstrated, to direct influence or appeal to Congress by the President except in the channel provided by the Constitution, ought not to be condoned by silence. We challenge any Member of Congress to point to any instance in the past history of our Republic where a bill was submitted to a committee of the Congress, drawn at the instance and aid of the President of the United States and declared to be the President's bill, and should be made a law.

We declare, without the remotest desire to reflect on the character or ability of the President, that the real, true history of this bill, its preparation, its manipulation, is a mortifying and discouraging commentary upon the representatives of the people who are sent here to Washington to frame laws at the dictation of their best and most independent judgment for the welfare of all the people of the country. Does any man pretend to say, with the environments of Washington and the allurements and potentialities of official life, that a Member of Congress, being "properly" advised that the President requested that such a bill become a law, is unmoved and uninfluenced by that information? It is in no sense a free government and responsible to the wishes and interests of the people if Members of the Congress are not free, untrammelled by official influence, either to reject or accept any legislative measure suggested by the President.

How reprehensible would the entire country view it if the Congress by legislative act would even intimate what the Supreme Court should decide in a case pending before that august tribunal. Improper legislative interference, for obvious reasons, is more culpable than that. How does this matter show up on its face? Here is a bill admittedly, stating it most mildly, bearing the indorsement of the President and drafted by his Attorney-General, that transfers the vital and important work of the Commerce Commission to the Department of Justice, over which the Attorney-General, who drafts the bill with that provision in it, presides.

We merely mention this as a matter of significance and far-reaching importance in the conduct of the business of the Commerce Commission. In referring to this public matter in this public way it is not with the hope or expectation to secure the defeat of the bill, but we do so hoping to give some encouragement to the maintenance of the independence of each of the great departments of our Government.

W. C. ADAMSON,
WILLIAM RICHARDSON,
C. L. BARTLETT,
ANDREW J. PETERS.

VIEWS OF MR. RUSSELL AND MR. SIMS.

We, the undersigned members of the minority of the Committee on Interstate and Foreign Commerce, are unable to agree in whole with the "views of the minority," and therefore submit the following:

We can not agree to all that portion of the bill embraced in the first six sections, which provides for the creation of a court of commerce, and defines its jurisdiction, etc.

First. We agree with the foregoing minority views in retaining in the law the language following:

Provided, however, That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory, as aforesaid.

But at the same time we wish to say that should this language be stricken out we do not assent to the proposition that striking it out will in any wise extend the federal control over interstate commerce in any particular.

Second. We further agree to the above minority views, with reference to section 7 of the bill, but our objections to this section would be greatly lessened, if not completely removed, if the section provided that the agreements between common carriers specified therein should receive the approval of the Interstate Commerce Commission before they become effective.

Third. We think that all that portion of section 12, which forbids the consolidation of competing carriers, are salutary provisions of law, but we object to that portion of section 12, which permits common carriers to submit to the court of commerce the question as to whether they are competing and obtain from that court, prior to the merger of the said carriers, a decision on the question as to whether such merger would be in violation of law and which further makes the decision of the court of commerce upon this question an estoppel between all of the parties to the application, including the United States.

Fourth. There are many portions of the bill which meet with our approval. We approve that portion of section 6*a*, which enjoins upon carrying corporations the duty of providing reasonable facilities for operating through routes and for the exchange, interchange, and return of cars used therein.

We approve that portion of said section which enjoins upon common carriers the duty of establishing and enforcing just and reasonable classifications of property for transportation and just and reasonable regulations affecting such classifications, rates, or tariffs and the issuance, form, and substance of tickets, receipts, and bills of lading.

Fifth. We approve section 6*b* as a step toward restoring the vitality of the long and short haul clause as it originally passed the House of Representatives in 1887.

Sixth. We approve section 8, which makes it the duty of common carriers subject to the act to furnish upon request a written statement

of the rate or charge applicable to a described shipment between stated places under the schedules to which such carrier is a party and which seeks to enforce this regulation by proper penalties.

We approve those provisions of section 8a, which seek to make more certain the detection and punishment of rebates and discriminations.

We approve those provisions contained in section 8b, which empower the Interstate Commerce Commission on its own motion to institute an inquiry in such cases and as to such matters as the law only now permits to be instituted upon complaint or petition.

Seventh. We believe that section 9, which seeks to amend section 15 of the act to regulate commerce, should be adopted.

Several amendments very beneficial to the public are contained in section 9, among which is the power conferred upon the Interstate Commerce Commission to enter upon a hearing of any new rate, fare, or charge, or any new classification or practice, whether upon complaint or upon its own initiative, and which further empowers the commission to suspend the rate, charge, or classification pending such hearing for a period of one hundred and twenty days beyond the time when the rate, fare, or classification would otherwise take effect, and which also grants to the commission the power to make such order as to the rate, charge, or classification as may be just and reasonable, either before or after the rate, charge, or classification may be in effect.

We also think that those portions of this section will be a beneficial amendment of the law which grant to the shipper the right to route his freight and which grant to the Interstate Commerce Commission the power to establish through routes and joint classifications and joint rates as the maximum to be charged either upon complaint or upon its own initiative without complaint.

Eighth. We also approve those sections of the bill adding new features to the interstate-commerce law by which the issuance of stocks and bonds by railroad corporations subject to federal regulation is safeguarded and controlled.

GORDON RUSSELL.
T. W. SIMS.

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